

Constructivism and the Liberal Dilemma

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Abstract

In this dissertation I show that constructivist liberal philosophers are confronted by a dilemma. On the one hand, the conceptions of persons that they appeal to are so thin that contradictory conclusions can be derived from those very same conceptions. Where one philosopher thinks that his or her conception excludes the capitalistic economic liberties from the list of basic rights, it is possible to show with great plausibility the opposite conclusion and vice-versa. The status of the capitalist economic liberties carries significant implications not only for the structure of the economy but also for the place and role of other normative values that more directly affect other areas of life. If it can be shown that a conception of persons leads to contradictory results when it comes to the status of the economic liberties in particular, then the general shape of society will change in significant and inevitable ways as well. In order to avoid this horn of the dilemma, some philosophers seek to thicken their conceptions of persons. In doing so, I maintain that they come to beg too many questions and subsequently undermine whatever normative conclusions they sought to derive from their conception of persons.

I analyze this connection within the context of the theories of political philosophers writing from different traditions of liberal thought. To do so I first distinguish between how the concept of personhood has been employed in moral philosophy as opposed to political philosophy. The chapters then move from liberal theories more progressively oriented, such as John Rawls's theory of justice, to more moderate positions, such as John Tomasi's market democracy, to Robert Nozick's libertarianism. In the first two cases I argue that the conceptions of persons employed by Rawls and Tomasi are thin, and that it is possible to show that their conceptions lead to conclusions in conflict with their own stated positions. In the case of libertarianism, I argue that libertarians generally construe self-ownership thickly by including the

economic liberties within its very definition, rather than appealing to self-ownership in order to derive those liberties.

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Introduction

As a political theory and as a political movement, liberalism has come to possess a nebulous and chameleonic character as thinkers and writers committed to a number of different, and often explicitly antithetical positions, have described themselves and their positions all as “liberal.” The nebulous and chameleonic character of liberalism is further accentuated as in contemporary society liberalism has come to be commonly associated with state welfare programs, market regulations that take the form of progressive taxation rates, minimum-wage laws, protectionist policies, and a bevy of other interventionist measures that have expanded the role of the state in economic and social life.¹ This more expansive role allotted for the state—often defended in the very name of freedom—under contemporary forms of liberalism marks a cleavage from the movement’s libertarian historical roots that also emphasized freedom—a sort of freedom, however, that grounded and countenanced a confident belief in the self-regulating and beneficial forces inherent within the capitalist market economy. This belief led to the expansion of economic freedoms and the constriction of state activity in economic affairs.

Any historian who approaches the history of liberalism from this perspective would spend considerable time in chronicling the variations and disputes that developed over the concept of freedom that ultimately led to this cleavage and progression, or retrogression—depending on one’s political commitments—within liberalism. In this version, the 1880s stand out with considerable salience as T.H. Green expounded and defended a more positive and substantive conception of freedom, which stood firmly in contrast to the thinner and more formal conceptions of freedom defended by many of Green’s liberal predecessors.² For Green and his

¹For more on the appropriation of the term “liberalism” by socialists and social democrats see Ralph Raico, *Classical Liberalism and the Austrian School*. Alabama: Ludwig von Mises Institute, 2012, pp. 81-85.

²Raico, pp. 81-85.

followers freedom meant more than non-intervention by others; it meant having the ability to act, which implied, in turn, having the resources and means necessary for action.

Another similar approach to understanding liberalism—one arguably equally indebted to T.H. Green—focuses on the connection between freedom and autonomy. William Galston categorizes and divides liberal thought according to a commitment, on the one hand, to autonomy and a commitment, on the other, to diversity.³ The former is “frequently linked with the commitment to sustained rational examination of self, others, and social practices.”⁴ In this tradition of liberalism, autonomy entails provision of many of the external resources protected by positive freedom, but it can also often require more than positive freedom. It can require freedom to be used in a certain way and even for certain ends. In the hands of some philosophers (such as Green) the connection between freedom and rationality has been so tightly construed that any action incompatible with the development of the “higher” self is not considered as a free action at all. It is easy to understand the vexation and sense of exasperation exhibited by more “classical” liberals in response to the self-styled “liberalism” of philosophers like Green and those with similar conceptual commitments who justify paternalistic intervention when freedom is not used “appropriately.”

Friedrich Hayek pursues a third, equally fertile approach to the history of liberalism. Interspersed throughout several of his works, he draws a distinction between two traditions within liberalism. The basis of his distinction relies on demarcating methodological, rather than substantive, commitments in political theory.⁵ One tradition is obviously a child of the Enlightenment and identifies its roots as extending all the way back to Cartesianism. Within this

³Galston, William. “Two Concepts of Liberalism,” *Ethics*. 105(1995): 516-534, p. 521.

⁴Galston, p. 521.

⁵See for example the first chapter of his *Individualism and Economic Order*. Chicago, Illinois: University of Chicago Press, 1948. For a geographical criticism of Hayek’s distinction, see Raico’s chapter “Liberalism: True and False” in *Classical Liberalism and the Austrian School*, pp. 67-110.

tradition, there is a rationalistic and constructivist approach to political theory. At one extreme, political theorists working in this tradition, such as socialists and communists, proffer an unshakeable confidence in the human being's ability to shape, design, and coordinate all aspects of society. At the other end, more moderate theorists—that brand of liberals sometimes referred to today as social democrats—envision an important role for reason in establishing the general contours of society *ab initio*. They do not, for the most part, share the same confidence in reason's ability to coordinate all aspects at all times of say, the economy; nonetheless, reason does play an important role in establishing the more general rules and regulations meant to govern all spheres of individual life, including the economy. Hayek distinguishes this mode of constructivist political theory with the anti-rationalism of Adam Smith and David Hume, which predated the rise of constructivism and began to gain increasing popularity in the nineteenth century. These thinkers often stressed, in direct contrast to constructivist thinkers, the fallibility and ignorance of human reason and, as a result, often advocated a cautionary and sometimes evolutionary approach to the design of the social, economic, and political institutions within human society. They preferred to let the rules of society, particularly of the economy, to develop “spontaneously.”

There are undoubtedly many thinkers who would fit within the same groups regardless which of these three approaches the historian chooses to adopt. But it would be a mistake to ignore and confound any distinctions and subtleties afforded by these divergent historical methods for the sake of conceptual convenience provided by some neat and tidy taxonomy. While there exist a number of taxonomical similarities, it would be egregious to infer from these similarities any *logical* connections of the nature such that a political theorist who is committed to a conception of positive freedom is necessarily a constructivist or even must be committed to

autonomy, or conversely, that a theorist committed to a negative conception of freedom is *ipso facto* anti-rationalist. The most telling example that should forewarn against hasty and sloppy inferences of this kind is found in the example of Ludwig von Mises. Mises was most famous for his declaration that economics is a fundamentally *aprioristic* science. In this sense, Mises' methodological procedures conflicted not only with Smith and Hume's, but even with those of a fellow member of his own school, his own disciple, Hayek! Despite these *methodological* differences, the *substantive* positions defended by Mises are much closer to thinkers within the anti-rationalist camp. History thus fails to accommodate the human mind's proclivity for organization and unity.

The general topic of this dissertation is the sort of liberal philosophy distinguished by the third historical approach, that is, constructivist political philosophy. It is important at the outset to confine and temper ambitions and expectations in this context. The sort of constructivism attacked here is *one mode* of constructivism so that the criticisms offered here should not be construed as an attack on the more general role of reason in constructing the rules and regulations of society. For one, I am of the opinion that the "spontaneous forces" appealed to by those thinkers in the anti-rationalism tradition offer meager and untenable bases for vital philosophical concepts such as rights and exhibit a deficiency in the sort of conceptual apparatus essential for evaluating the shortcomings of institutions currently found in society. Constructivism, I believe, can offer a stronger foundation for these concepts, and in doing so, can offer more conceptual resources to aid in the evaluation of contemporary society. Moreover, I am of the opinion that reason can play an invaluable role in the establishment and evaluation of the rules and regulations that comprise society and its integral institutions. Indeed, the arguments presented in the dissertation are rationalistic in nature.

Despite these remarks, there is a mode or form of constructivism—one that has gained recent popularity in contemporary liberal political philosophy—I find to be problematic. I refer to attempts to derive the list of basic rights—those rights that enjoy a privileged status exempting them from nearly all forms of state intrusion—from an idealized conception of persons, particularly in the case of the capitalist economic liberties. Constructivist philosophers who engage in this method appeal to these conceptions both to determine the list of basic rights and to justify those rights. It is not clear to me that either of these claims can be defended.

I intend to show that constructivist liberal philosophers are confronted by a dilemma. On the one hand, the conceptions of persons that they appeal to are so thin that contradictory conclusions can be derived from those very same conceptions. Where one philosopher thinks that his or her conception excludes the capitalistic economic liberties from the list of basic rights, it is possible to show with great plausibility the opposite conclusion and vice-versa. The status of the capitalist economic liberties carries significant implications not only for the structure of the economy but also for the place and role of other normative values that more directly affect other areas of life. Therefore, if it can be shown that a conception of persons leads to contradictory results when it comes to the status of the economic liberties in particular, then the general shape of society will change in significant and inevitable ways as well.⁶

In order to avoid this horn of the dilemma, some philosophers seek to thicken their conceptions of persons. In doing so, I maintain that they come to beg too many questions and

⁶My comments here should not be misconstrued as a crude form of economic determinism. I do not claim that the status of the capitalist economic liberties is the sole determinant of *all* of the features that comprise *all* of the social, economic, and political institutions within society. Instead, my point is that we cannot (and should not) think of the rules governing the market economy as the rules governing a segregated domain of human activity explicated in overly narrow terms, such as voluntary commercial transactions, with no effects outside of that domain. More obviously and more to the point, the rules governing the system of property and the *status* those rules possess carry implications with bearing on other normative values, such as equality of opportunity in terms of equalizing background conditions or in interfering with the hiring policies and practices of employers, to provide only one example.

subsequently undermine whatever normative conclusions they sought to derive from their conception of persons.

If these idealized conceptions of persons cannot determine the status of these liberties without begging all the important questions, then they certainly play no justificatory role. If the dilemma presented here is correct, constructivist political philosophers must abandon this particular form of constructivism. I explore what this would mean for constructivism as a viable method of political philosophy in the conclusion of the dissertation.

The dissertation is outlined as follows. The first chapter distinguishes how philosophers have employed the idea of personhood as a conceptual device in moral philosophy as opposed to political philosophy. The distinction is particularly important because a number of problems that plague the concept in moral philosophy are impotent when it comes to how political philosophers tend to employ the concept within their political theories. It is essential to recognize the differences to understand why.

The second chapter provides an analysis of the conception of personhood found within John Rawls's political theory, who is the paradigm figure of the high liberal (social democratic) tradition. He argues that the economic liberties are not connected in any essential manner to his conception of personhood. Details of the analysis will show, however, that the development of the capacities involved within his conception of personhood requires, in contrast to his own stated position, elevating the capitalist economic liberties to basic rights. By deriving contradictory conclusions from Rawls's own conception of persons, the argument in this chapter demonstrates the first horn of the dilemma.

The third chapter considers John Tomasi's ideal of persons as self-authors. Tomasi claims that self-authorship requires elevating more of the capitalist economic liberties to basic

rights. I argue, to the contrary, that elevating more of the capitalist economic liberties to basic rights engenders conditions that make it difficult for the vast majority of the population to develop and exercise their self-authorship. A better way to promote their self-authorship is to leave the capitalist economic liberties off the list of basic rights.

The chapter on libertarianism presents the second horn of the dilemma. Libertarians derive their institutional apparatus from a conception of persons as self-owners. However, they tend to define self-ownership in a much thicker manner than the other conceptions discussed. As a result, it is not possible to derive contradictory conclusions without surreptitiously introducing premises that would be rejected by libertarians. Nonetheless it becomes clear that in first specifying the features of self-ownership, libertarians can do so in a way congenial to their normative agenda only by begging the question.

1 Personhood in Moral versus Political Philosophy

1.1 Personhood in Moral Philosophy

In moral philosophy the concept of personhood functions as a taxonomical device for demarcating between beings with a vastly higher moral status or full moral status (the highest possible level of moral status) from those beings with a lower or no moral status altogether. The concept typically identifies a threshold beings have to pass in order to qualify for the higher level of moral status that comes with being a person. In the literature the possession of some sophisticated cognitive capacity has typically set the threshold between the two levels of moral status.⁷ The general idea is that a being possesses some morally relevant property considered to be both necessary and sufficient for the designation of personhood and therefore the higher moral status attributed to persons. Conversely, the absence of the morally relevant property entails relegation to a category of beings with either an inferior degree of moral status or none at all. In debates over the moral status and personhood of various beings moral philosophers tend to gravitate towards two points: identification of the morally relevant property (or properties) for personhood and moral status more generally, and the necessity and sufficiency of that property (or properties).

This initial section offers an interpretative exposition of personhood and moral status within the moral tradition by illustrating how the concepts have evolved in order to accommodate a growing number of intuitions, or normative judgments, concerning the moral status of different human beings and animals. In anticipation this section will first highlight some of the reasons for why being a person and having any moral status is of importance. Then the section will describe changes undergone by the two concepts within moral philosophy in order to

⁷See for instance Harry G. Frankfurt "Freedom of the Will and the Concept of a Person," *Journal of Philosophy*. 68(1971): 5-20; Michael Tooley, "In Defense of Abortion and Infanticide," in *What is a Person?* Ed. Michael Goodman. Clifton, NJ: Humana Press, 1988; Daniel C. Dennett "Conditions of Personhood," in the same.

accommodate various intuitions. Lastly, the section covers, in an expository rather than argumentative manner, some concerns that tend to plague the concept of personhood in its usage within the moral tradition as well as some potential solutions to those problems. One purpose of the section is to emphasize the contrast in which personhood has developed under the moral tradition compared to its development and utilization within the political tradition.

1.1.1 Why Moral Status and Personhood Matter

Why is being a person or having any moral status important? Christopher Morris enumerates a number of different characterizations of moral status found in the literature.⁸ These interpretations capture the gamut of moral language: the possession of moral status means having interests that must be considered from the moral point of view; moral status means that a being “counts morally” in its own right; or, a being with moral status means that things matters for its sake.

There are several important features to glean from the various characterizations of moral status offered by moral philosophers. The first is that the ascription of moral status implies the existence of *interests*, or a state of well-being, to the possessor of moral status.⁹ Having interests, or a well-being, means that a particular being can be made better or worse off—that it can be benefited or harmed. Having interests in these general terms does not require the possession of the sort of sophisticated cognitive capacities that typically allow an entity to entertain conscious thoughts of its own interests and well-being.¹⁰ Sentience, understood through various

⁸Morris, Christopher W. “The Idea of Moral Standing,” in *The Oxford Handbook of Animal Ethics*. Ed. by T.L. Beauchamp and R.G. Freys. Oxford: Oxford University Press, 2011, p. 258-260.

⁹Bernstein, Mark. *On Moral Considerability*. New York: Oxford University Press, 1998, p. 13. This raises the issue that the morally relevant properties that ground moral status may be derivative of a larger theory of well-being. What counts as an interest, benefit, and harm will depend on the theory of well-being adopted, which determines, in turn, the morally relevant properties.

¹⁰Warren, Mary Ann. *Moral Status: Obligations to Persons and Other Living Things*. Oxford: Oxford University Press, 1997, p. 80.

physiological and behavioral indicators, can serve as a sufficient marker for the attribution of well-being despite the absence of conscious thought. As a result, when the capacity to feel pleasure and pain is taken as the morally relevant property for grounding moral status, a wide number and variety of animals fall under its application and qualify for moral status. Inanimate objects such as rocks are the sorts of entities that would not have any moral status under this conception of moral status.¹¹

The second important feature of moral status implied by its ascription is that the fulfillment or hindrance of an entity's interests matter for the entity's own sake. This means that the entity's interests are not merely instrumentally valuable for the promotion of some other social good; nor does this mean, however, that the interests of a particular being must hold intrinsic value even for the owner of those interests. The idea instead is that those interests are of eminent value *to* or *for* that being independent both of the value that the fulfillment of those interests may hold for others or the specific role that those interests play within that being's value system.

Recognizing the moral status of an entity requires affording the appropriate care and diligence to that being's interests in our moral deliberations. The recognition of moral status does not provide full immunity for one's interests as the potential benefits or harms to others that stem from the fulfillment of an entity's interests rightly factor in our deliberations and may ultimately provide suitable justification for legitimately overriding and violating the interests of a being with moral status. Nonetheless, what initially generates the source of value and the requirement to include the interests of others within our moral deliberation follows from the recognition of an entity's moral status.

¹¹The issue is slightly more complicated in the case of plants. Whether plants can have a well-being depends on whether we consider the fulfillment of their teleological organization as a good. For a discussion of this topic see Warren, p. 46.

Moral philosophers often introduce the notion of “moral rights” as a way of capturing both the individuality and moral importance of a being with moral status.¹² At the very minimum we may think that a being with moral status possesses the moral right to life.¹³ This point explains why debates concerning the permissibility of abortion naturally center on whether the fetus has any moral status. Another minimal moral right stems from a being’s capacity for well-being, as any being with moral status enjoys a general presumption against harm from others. However, beyond these two rights it is not often clear what other moral rights—negative or positive, if moral status were to include any positive rights at all—that the possession of moral status entails. The list of moral rights would probably vary according to what properties are taken to be morally relevant for grounding moral status in the first place.¹⁴ It would follow that moving up the “ladder” of moral status to beings who possess higher degrees of moral status, in virtue of possessing more of the morally relevant properties, that we would expect the possession of a greater number of moral rights—we would expect the bundle of rights possessed by beings with a higher moral status to include at minimum all of those rights possessed by beings with lower degrees of moral status. It would also follow from the possession of a higher degree of moral status that the reasons for violating the moral rights of these beings would have to overcome a much higher burden of scrutiny than those reasons needed for violating the interests of beings with lesser moral status.

¹²Loren Lomasky writes for example: “Affirmations of basic rights spring from a commitment to the value of the individual and in turn reflect that commitment into the moral arena,” *Persons, Rights, and the Moral Community*. Oxford: Oxford University Press, 1987. Lomasky’s usage of “basic rights” is synonymous with my usage of “moral (or natural) rights,” which will be discussed shortly.

¹³This is how Michael Tooley describes it, pp. 83-114.

¹⁴James Rachels argues that we would be better off by dropping the idea of moral status altogether in favor of identifying specific duties that correspond to specific morally relevant properties. The possession of sentience, for example, generates a corresponding duty on the part of others to not harm the sentient being. See “Drawing Lines,” in *Animal Rights: Current Debates and New Directions*. Ed. by Cass Sunstein and Martha Nussbaum. Oxford: Oxford University Press, 2004, pp. 162-174.

One of the general functions of any moral theory is to provide some method for adjudicating between the claims and interests of parties when they enter into conflict with one another. The concept of moral status allows us to solve these persistent issues of conflict by according more weight in our moral deliberations to the interests of those beings with a higher level of moral status (or, alternatively, to deny that beings with a lower moral status possess interests that are comparable to those with a higher moral status). As a mundane example, human sanitation requires the continual destruction of millions of bacteria, and agriculture destroys the lives of thousands if not millions or billions of insects. A system of moral status that includes gradations of moral status among different beings allows us to adjudicate between the moral claims of insects and bacteria against the claims of human beings. Even though we do not normally think of these actions as presenting moral problems, the notion of moral status allows us both to ascribe some moral worth to these beings that signals a general moral importance while also providing a method for justifying certain practical necessities. In less paltry but more fanciful cases, such as having to choose to save either a dog or a child from a burning building, moral status allows us to make a non-arbitrary and justifiable choice to save the child. In all of these cases the interests of those with lesser moral status still maintain a presence in our deliberations despite being ultimately overridden.

Besides the uncertainties concerning the appropriate identification of which rights should count as moral rights, another persistent ambiguity concerns the ontological status of the very rights couched in the concept. Are moral rights natural rights, and in what sense, natural?¹⁵ On the one hand, moral rights are “natural” rights insofar as they are tied to natural features found among different entities—human beings and animals—in the world. Moral rights are also natural

¹⁵Not all philosophers use the same terminology as I employ here. Lomasky for example, refers to what I call moral rights as “basic rights.” He describes the concept in the same way, however, despite differences in terminology.

rights insofar as the latter are conceived as pre-institutional. Some moral philosophers are fond of employing the idea of a “moral community” in which recognizing the moral status of some being means its inclusion within the moral community. The moral community is best understood here as a community where particular norms—such as the recognition of certain rights—both precede and extend beyond the barriers of political societies and their legal institutions. While some members of the moral community may differ with respect to the legal rights they possess in virtue of their citizenship within particular countries, all members would enjoy the same moral rights that come with being a rightful member of the moral community, where the only variations reflect sensitivity to gradations in moral status. Moral rights then, in contrast to legal rights, are not dependent on the conventions of legal institutions but in ideal circumstances serve as the regulative model over the formation, adoption, and enforcement of various schemes of legal rights in the first place.¹⁶ In non-ideal circumstances where legal rights serve as tools for oppression and violence by denying the moral status and moral rights of various beings, moral rights are meant to trump the enforcement of those legal rights. In this way moral rights serve the same function as “human rights” without the arguably unjustifiable species bias: they provide an antecedent moral point of view to evaluate the existing scheme of legal rights implemented by various political societies.

1.1.2 The Transition from Univalent to Multivalent Accounts of Moral Status and Personhood

It is evident that the concept of moral status plays a central role in our moral thinking and in regulating our actions towards different animals and perhaps even the ecosystem. The concept of personhood accordingly forms one component within a more expansive account of moral status by functioning as a device for identifying those individuals who possess a higher moral

¹⁶Lomasky, p. 101.

status. But the concept has not always played this more modest role. Under the theories of some moral philosophers personhood has been employed as a conceptual tool for demarcating individuals with moral status from those with no moral status whatsoever. A view like this would purport to identify the possession of a single necessary and sufficient property requisite for an individual to qualify as a person. What makes these traditional models unique is that the single necessary property for personhood has often been taken as the *only* morally relevant property for the designation of moral status more generally, so that any individuals who happened to lack the privileged property would accordingly fail to qualify for any moral status at all. A univalent¹⁷ account of moral status treats persons as the sole possessors of moral status because it holds that only a single property is morally relevant for the joint ascription of personhood and moral status.

In contemporary moral philosophy the transition from more benighted and parochial perspectives to modern sentiments concerning the moral status of different animals and special human beings has led many moral philosophers to reject the traditional, univalent model in favor of a multivalent account of moral status in which a number of morally relevant properties are taken as sufficient for grounding moral status. One consequence of adopting a multivalent account of moral status is that the concept of personhood comes to play a diminished role in moral theory. As we will see, personhood retains most of its efficacy as a moral concept insofar as it functions as an overly crude device for demarcating beings with moral status from those with no moral status at all; the concept operates at its highest explanatory power only when it offers glaringly bad accounts of moral status. But modern sentiments revolving around the status of nonpersons like most animals show that any account of personhood and moral status more generally that fails to attribute any moral status to nonpersons should be rejected as an unpalatable theory of moral status. The problem is that as a theory of moral status incorporates a

¹⁷The term is Lomasky's, p. 40.

greater number of morally relevant properties to account for the expected gradations in moral status among different beings, the concept of personhood inversely becomes more and more unanalyzable and seemingly impotent in explanatory power.

The need for a multivalent account of both moral status and personhood that is capable of accommodating many of our intuitions concerning the moral status of infants, children, the severely cognitively impaired, and certain animals means abandoning the ambition that the concept of personhood embodies a tidy list of necessary and sufficient conditions. Instead, the concept of personhood, like moral status, expands to include a growing number of morally relevant properties. In light of this conceptual expansion, Logi Gunnarsson suggests that “person” is to be understood as a “thick evaluative concept.”¹⁸ Rather than understanding and applying the concept of personhood in purely descriptive terms, the concept includes a normative or evaluative component as well. In other words, to count as a person, an entity should (1) fulfill the descriptive criterion or criteria, and (2) we—that is, human beings applying the term—should answer affirmatively the question of whether this particular entity *should* have the moral status that comes with being a person. If the being in question fulfills both the descriptive condition, as well as the normative condition, then it counts as a person.¹⁹ Our persistence in thinking that the concept must include necessary conditions will inevitably produce a conflict between these two components: the descriptive component for being a person will tend to exclude those beings that we normatively think should count as persons. On the other hand, if personhood no longer

¹⁸Gunnarsson, Logi. “The Great Apes and the Severely Disabled: Moral Status and Thick Evaluative Concepts,” *Ethical Theory and Moral Practice*.” 11(2008): 305-326, pp. 318-322.

¹⁹Some may object that including the normative component as one of the criteria for counting as a person begs the question at hand. However, this criticism problematically implies that the descriptive component of personhood captures a brute fact about the natural world independently of human invention. But given that personhood is a moral and an anthropomorphic concept, even the descriptive component—that the possession of some properties are more important and valuable than others—is a product of largely anthropocentric thinking. Including the normative component as one of the criteria for counting as a person is one example of a “reflective equilibrium” in which we balance the descriptive conditions of the concept with our intuitions or judgments concerning the moral status of different beings. I will return to this point below.

identifies even any necessary properties then we may wonder what sort of role, if any, it can continue to play in our moral thinking. It appears that the evolution in the dialectic concerning which beings should have what sorts of moral status renders the concept of personhood largely disposable.

Understood correctly, however, the need to develop a more expansive account of moral status leads to a more modest, but importantly functional, formulation of personhood. The natural outcome of this process produces a conception of personhood that is supposed to serve as an illuminating threshold concept—albeit one weaker than the univalent version—in moral philosophy: the concept is supposed to distinguish coherently between persons and nonpersons by identifying a morally relevant bundle of sufficient properties. The transformation of personhood from a descriptive list of necessary criteria to a bundle of morally relevant properties mediated by an evaluative component is meant to retain the concept’s relevance within moral philosophy as an important conceptual tool.

However, even this more plausible conception of personhood faces several problems. Towards the end of the section I will discuss two objections that apply against the concept when understood as a bundle of independently sufficient properties. The discussion will serve as an important heuristic in comparing and teasing out some of the differences in the concept as it has developed and been employed under the moral and political traditions respectively. Before turning to these issues, it is essential to understand how the evolution of the dialectic has led to this transformation in the concept.

Kant’s account of personhood and moral status illustrates the general problem associated with univalent accounts most vividly.²⁰ Kant defines persons as those beings with the capacity

²⁰Another method for criticizing the Kantian model would be to take issue with which criterion is identified as the necessary and sufficient condition for personhood. We might think that rational agency, self-awareness, and

for moral agency, and it is only persons who possess any moral status. As a result, only persons are owed direct duties, whereas nonpersons, who lack any moral status altogether, are owed indirect duties at most. A direct duty is an obligation that others have towards an individual for the individual's own sake, in which others view the individual as a proper subject of moral behavior; it is possible, in other words, to act rightly or wrongly towards that individual. An indirect duty is an obligation not towards a being for its own sake, but for the sake of a being to whom others have a direct duty. Beings that command only indirect duties, such as nonpersons, are not and cannot be the proper subjects of moral actions. There are then significant ramifications in failing to qualify as a person under the Kantian model, as the obligations towards those beings will differ in very important ways compared to the obligations owed to persons. For Kant, because animals and infants are not persons, I can have only indirect duties towards them. In harming an animal or infant I do not violate any obligation that I have towards the animal or infant itself, but instead, I violate the obligation that I have towards the owner or caregiver.

Kant's account of moral status reasonably strikes many as deeply flawed for this very reason. If I have a duty to not harm or kill a dog or a child it's because I have a duty *to* that dog or child and not a duty *to* the owner or the parent. Any account of moral status that claims to identify a single necessary and sufficient criterion for both personhood and moral status will run afoul of our intuitions concerning the moral status of nonpersons by allowing, at most, for the possibility of indirect duties, and at worst, in the absence of any direct duty, the permissibility of any action towards those nonpersons.

autonomy all provide plausible criteria as well. See DeGrazia, "Great Apes, Dolphins, and the Concept of Personhood" p. 303.

Another possibility is to develop a “two-tiered” model of moral status.²¹ In such models personhood differentiates beings with full moral status from those with a lesser degree of moral status, so that unlike the Kantian model, nonpersons qualify for some degree of moral status. Here we might still make the initial distinction between persons and nonpersons on the basis of the possession of some developed cognitive capacity and then specify some additional property of moral relevance for nonpersons: persons have the capacity for self-awareness, whereas nonpersons possess some other morally relevant property such as sentience.²² Under this model, all persons correspondingly share the morally relevant property, and we can ground the moral status of nonpersons by identifying some other morally relevant property possessed by all nonpersons.

Unfortunately, even the two-tiered model tends to conflict with our intuitions concerning the moral status of both various persons and nonpersons. Prevailing intuitions concerning the moral status of infants, the severely cognitively impaired, the great apes, and other animals often suggest that there is a need for the specification of additional morally relevant properties as well as finer gradations of moral status within the categories of persons and nonpersons alike. Take for example the moral status of children and the cognitively severely impaired. For many philosophers and non-philosophers alike both children and the cognitively severely impaired possess a higher moral status than the great apes. Yet satisfying this intuition enervates the utility of employing the concept of personhood under the two-tiered model. For if children and the severely cognitively impaired are not persons, then the two-tiered model dictates that they are to have a lower moral status than the great apes who do qualify as persons in virtue of their

²¹DeGrazia, David. “Moral Status as a Matter of Degree?” *Southern Journal of Philosophy*, 46(2008): 181–198, p. 192.

²²Whatever properties I refer to should not be taken as an argument for or countenancing including those properties within the bundle. I use the properties I specify only for the sake of demonstrating the nature of the overall argument and because they are properties popularly referred to in the literature.

possession of the required cognitive capacity for self-awareness.²³ On the other hand, if we were to deny this result and yet concede that children and the cognitively severely impaired fail to qualify as persons because they lack the requisite condition for personhood, while insisting nonetheless that they have a higher moral status than the great apes, then the theoretical result of accommodating this intuition would be to imply that certain nonpersons possess a higher moral status than some persons rendering the concept of personhood largely impotent.²⁴ It is unclear what sort of role personhood plays within moral theory when we have some persons (the great apes) with a higher moral status than other animals because they are persons, but then we also have some nonpersons (children and the severely cognitively impaired) who have a higher moral status—and possibly even full moral status—despite failing to qualify as persons. To avoid this result one would be inclined to attribute personhood to both children and the severely cognitively impaired. This is indeed the route many philosophers choose to pursue. However, attributing personhood to both children and the severely cognitively impaired requires expanding the descriptive component within the concept of personhood far beyond the single criterion under the two-tiered model in order to include a number of properties deemed to be morally relevant for the designation of personhood for children and the severely cognitively impaired. As a result, it becomes necessary to introduce a multivalent account of personhood (and likely nonpersonhood as well).

²³The idea here is that whatever property we appeal to in designating personhood in adult human beings, there will be good reason for including some animals, such as the great apes and possibly dolphins, as persons as well. The difficulty is that from a cognitive perspective, adult human beings will share more in common with the great apes than very young children or the severely cognitively impaired. Additionally, the two-tiered model is incapable of distinguishing between the moral status of the great apes and adult human beings. Accommodating this intuition, however, does not require expanding the descriptive component of personhood by adopting a multivalent account as compared to those cases mentioned in the text.

²⁴This is Gunnarsson's position, p. 311 and 316.

Expanding the descriptive component of personhood to accommodate the higher moral statuses of children and the severely cognitively impaired requires an appeal to largely disparate properties than those properties originally included as the basis for personhood in adult human beings, or even the great apes.²⁵ Philosophers who argue that children and the severely cognitively impaired are persons often appeal to properties that are altogether qualitatively distinct or tangentially related to sophisticated cognitive capacities, such as having the capacity to care as one example,²⁶ or having the potential to develop into adult human beings with particular cognitive capacities as another. These properties are not necessarily connected to those properties that ground the status of personhood for adult human beings or the great apes. Children do not yet possess an adequate level of self-awareness—even though they depend on others to ultimately develop that capacity—and the severely cognitively impaired, as well as those suffering from dementia, may never gain or regain that capacity. The consequence of expanding the descriptive component of personhood in this way highlights the absence of any single property shared by the great apes, the severely cognitively impaired, children, and adult human beings that we can point to in order to explain why all of these beings and not others are persons. Instead, the concept of personhood becomes an amalgamation of often ad hoc properties employed to salvage our intuitions concerning the moral status of different beings.

The development of the discussion over the moral status of different beings thus forces us to adjust the descriptive component of personhood to fit more in line with our intuitions

²⁵Daniel Dennett for example concedes that we are unlikely to “discover” a list of necessary and sufficient conditions for personhood. Nonetheless, the six conditions that he provides are each dependent on the prior conditions. Because all of the beings that we would think of as persons do not share any single property, their inclusion as members within the category of persons will rest on entirely separate conditions each taken to be independently sufficient.

²⁶See Jaworska, Agnieszka. “Caring and Full Moral Standing,” *Ethics*, 117(2007): 460–497 and E. F. Kittay. “At the Margins of Personhood,” *Ethics*, 116(2005): 100–131.

concerning who should count as a person.²⁷ But once we expand our account of moral status and personhood to include a number of different morally relevant properties for their respective ascriptions then the concept of personhood loses the utility that it provided in the two-tiered and the Kantian model: the distinction between persons and nonpersons no longer tracks a number or even a single necessary property shared by all persons.

As we have seen, accommodating our intuitions concerning the comparative moral status of different beings requires employing a multivalent account of moral status and personhood.²⁸ As our theory of moral status expands to include not only the attribution of moral status to a larger number of beings but also a framework sensitive to comparative rankings of moral status more properties will be taken as morally relevant for grounding both moral status and personhood.²⁹ As a result, the role that personhood plays in our account of moral status naturally changes as well.

There are several important conclusions to be drawn here. First, the evolution of the dialectic shows us that in any plausible account of moral status personhood can no longer play the central role that it did originally by picking out a necessary and sufficient property shared by all persons. Instead, the concept now comes to identify a bundle of various properties each independently sufficient for the ascription of a vastly higher degree of moral status—the status that comes with being a person. The second consequence is that personhood’s utility lies in more modest aspirations, namely, the concept demarcates a threshold by distinguishing between those beings with a higher degree of moral status from those who lack that status. As long as no

²⁷Refer to footnote 4 as to why proceeding in this manner is not problematic in itself.

²⁸Mary Ann Warren, for examples, refers to seven different principles that ground varying degrees of moral status for different beings. See her already cited *Moral Status: Obligations to Persons and Other Living Things*.

²⁹It is important to point out that a multivalent account of personhood is not by itself sufficient for determining relative rankings within the category of persons; we are still in need of some mechanism for determining the weightings of the additional morally relevant properties now included as part of the concept. Otherwise, we are left with the consequence that all distinct members who qualify as persons have the same level of moral status.

nonpersons possess the properties in the bundle then it is not as important that not all persons happen to possess all of the properties. The concept of personhood consequently tells us that there are at least some properties more important than others that correspondingly justify attributing a higher moral status to beings who possess those properties. Thus, expanding the descriptive criteria for personhood helps to accommodate our intuitions without having to resort to a confusing and opaque ranking where some nonpersons enjoy a higher moral status than other persons who enjoy simultaneously a higher moral status than some nonpersons.

The second conclusion is that personhood no longer always picks out sufficient properties for the ascription of *full moral status*. For example, even if we think that the possession of self-awareness is what grounds personhood and full moral status in adult human beings, the possession of self-awareness is not always sufficient for full moral status, although we might think it is sufficient for the higher degree of moral status that comes with being a person. If it were sufficient for full moral status, we would violate the intuition that children and the severely cognitively impaired have a higher moral status than the great apes. The thought here is that we can agree that the moral status that comes with being a person (the normative or evaluative component) grants an individual a vastly higher degree of moral status, but we cannot make the stronger claim, at least across the board, that being a person means having full moral status. The reason for this is that we want to be able to make finer gradations within the category of persons itself. Given that the great apes and adult human beings both qualify as persons in virtue of possessing the same property, we need to be able to make the further claim that the great apes maintain a lower moral status than adult human beings. Balancing the descriptive and normative components of the concept by expanding the former will not tell us how to organize the relative rankings of different persons. These two conclusions demonstrate that while the concept of

personhood undergoes a number of changes—namely in expanding the descriptive criteria for qualifying as a person—in response to more enlightened sentiments concerning the status of various beings in the world, the only manner in which the concept will continue to play an integral role in our moral thinking would be for it to function as a threshold concept comprised of a bundle of independently sufficient properties.

1.1.3 Objections against Personhood Understood as a Bundle of Independently Sufficient Properties

I now want to consider two objections that target personhood when specifically understood as a bundle of independently sufficient properties meant to demarcate some threshold between different levels of moral status. The first objection to consider would be that the concept is problematically arbitrary in our selection of the sufficient properties meant to set the threshold for having the heightened level of moral status associated with counting as a person.³⁰ If the concept is going to play any sort of role in moral thought, then it is important to suggest a plausible response that explains why the properties within the bundle are not arbitrary in a problematic way.

Some such answer might proceed in the following way. It is inevitable that whatever properties included in the bundle will reflect an anthropocentric bias to some degree, and some justification would be required for maintaining that some properties are more valuable than others. This is the only way to proceed as the concept of personhood is not some Platonic Idea in which our only impediment is “discovering” whatever true set of sufficient properties the concept encompasses. Both personhood and moral status are moral concepts that are at bottom human inventions. As such, the only sorts of arbitrariness that we need to guard against are those

³⁰DeGrazia, “The Great Apes,” p. 304.

forms that seek to exclude members of the human species based on properties like race or gender that lack any sort of plausible moral justification.

There is another objection that can be directed against understanding personhood as a bundle of independently sufficient properties. Another concern one may have is that the possession of many of the properties typically specified to count as a person does not occur all-or-nothing.³¹ Whatever properties we decide to include within the bundle will often include the sorts of properties that come in degrees so that it will not be the case that all nonpersons entirely lack those properties altogether. We may appeal, for example, to the possession of self-awareness as the morally relevant property for grounding the status of personhood in both the great apes and adult human beings. However, our willingness to differentiate between the moral status of these two groups consequently implies that self-awareness is a property that comes in degrees. The weaker formulation of personhood relies on identifying a bundle of sufficient properties uniquely possessed by different individuals. But if the objection is true, then it is not clear how even this weaker formulation of personhood could function as a threshold concept because even some nonpersons would possess, albeit to a lesser degree, those properties taken to be sufficient for the conferral of personhood. Would we have to mark thresholds for each property so that beings only with “enough” self-awareness or the “right sort” of self-awareness count? How could we even begin to identify such cut-off points?

Again, a response may proceed in the following way. This worry over our inability to identify thresholds for each of the morally relevant properties for personhood ignores the dual aspects within the concept. According to the objection, determining whether a particular individual counts as a person depends on whether that individual possesses the required “amount” of self-awareness or whether the individual can exercise self-awareness in the morally

³¹DeGrazia, “The Great Apes,” p. 305.

relevant ways for personhood. In this manner it does appear arbitrary to designate a specific threshold for each property and to say that individuals with either enough self-awareness or the right sort of self-awareness qualify for the status that comes with being a person. But we have to remember that the possession of self-awareness by itself is not sufficient for counting as a person; we also have to include the normative component of personhood by asking whether a particular species that possesses some degree of self-awareness should have the moral status of a person. In this way whatever threshold we do establish will reflect our mediation between the two components of personhood in the reflective equilibrium. The self-awareness possessed by the great apes (and perhaps dolphins), while not exactly similar to the sort of self-awareness that adult human beings have, comes close enough to adjust the threshold to include these kinds of beings.³²

The only scenario in which proceeding in this manner could pose a potential problem is if the gradations in self-awareness possessed by different species were so miniscule and imperceptible that at whatever point we were to set the threshold, it would make sense to include the beings that fell under that line. In other words, the threshold line would be so thin that it would always seem reasonable to include the beings just underneath it so that by repeating this process we would have effectively included any being with any self-awareness whatsoever. But the possession of self-awareness does not appear to fit this paradigm: in the instances where we do observe self-awareness in different beings, the differences are so large we can more appropriately think of the threshold as a thick rather than a thin line.³³

Nonetheless, an advocate of the objection might respond by noting that the arbitrariness in setting the threshold is especially problematic in determining the status of beings considered to

³²Gunnarrson, p. 311.

³³See Richard Arneson for a contrary view on this point, "What, If Anything, Renders All Humans Morally Equal?" in *Singer and His Critics*. Ed. by D Jamieson. Oxford: Blackwell Publishing, 1999, p. 3.

be marginal cases (hence the predicate used to describe them). But this is simply another example of how the concept of personhood is most appropriately understood through reflective equilibrium. As our knowledge concerning the developed cognitive capacities of the great apes (and perhaps dolphins) continues to grow so that we recognize their possession of some of the descriptive criteria of personhood—importantly, those properties they share with adult human beings—then we adjust the normative component accordingly. In this case, we adjust the normative component to fit the descriptive component, whereas in the cases of infants, children, and the severely cognitively impaired we adjusted the descriptive component to fit more in line with our normative judgments. Judgments concerning the moral status of animals right at the threshold, however, will ultimately be a product of the reflective equilibrium, and not a matter of fact. This does mean that the concept will not always be readily and clearly determinate. But we cannot expect our moral concepts to be determinate with the same sort of precision that we might more appropriately expect of mathematical and scientific principles. After all, if it turns out that all of the current studies that demonstrate the sophisticated cognitive capacities of the great apes and dolphins were erroneous, then our judgments concerning their moral status would appropriately change as well. Applying the concept of personhood becomes a matter of continually and diligently balancing the descriptive and normative components.

As we have seen the dialectic in moral philosophy leads us to abandon the notion that concept of personhood includes any necessary criteria. Instead, a more plausible approach takes the criteria for personhood as a bundle of independently sufficient properties. But even this version of personhood runs into several problems. Many of the properties that would typically be included within the bundle admit of degrees so that their possession would not be exclusive to individuals considered as persons; many nonpersons would happen to possess—although to a

lesser degree—the various properties sufficient for personhood. If the concept is going to play any sort of role in moral philosophy, then its viability will depend on the soundness of the answers that can be provided to the sorts of objections raised above. If it turns out that these responses prove inadequate, then it does appear that the evolution of the dialectic has indeed eroded the reasons for implementing the concept in our moral thinking.

My purpose in this first section has been only to provide an interpretative exposition of the development of the concept of personhood in moral philosophy in order to draw out its differences compared to how the concept has been utilized in political philosophy. Compared to moral philosophy, the way that political philosophers use the concept and the role it plays differs in some important aspects. Political philosophers do not adopt the more plausible conception of personhood described here and continue instead to describe their versions of persons in terms of some necessary criteria. This in itself is not a reason for reading their political theories with suspicious eyes. The next section of the chapter describes how the concept of personhood has developed to serve a more substantive and purely normative function in political philosophy than in moral philosophy. These two divergent goals within each tradition explain why political philosophers still refer to and utilize a seemingly faulty conception of personhood in their political theories. The concerns that we may have with personhood in the moral tradition may not prove as troublesome in the political tradition, while the gravity of previously trivial or irrelevant concerns may become all the more problematic.

1.2 Personhood in Political Philosophy

For modern liberal political philosophers the concept of personhood is intimately connected to the notion of citizenship. A person is someone who can be, or is, a citizen of a

particular society.³⁴ Those individuals who do happen to qualify as citizens will, in virtue of doing so, possess a higher status than those who fail to qualify as citizens. But when the concept of personhood is understood in terms of citizenship its function is more substantive than that of a device used merely for the demarcation of varying levels of moral status. The implicit assumption is that society, when broadly construed to include the state as well, ought to be arranged in such a manner as to complement or promote the essential capacities of citizenship that are derived from, and connected in some fashion to, a conception of the good.³⁵ Based on this assumption, political philosophers then employ their respective conception of persons to determine the scheme of basic rights and the arrangement of the political, social, and economic institutions found within society. The differences manifested in the alternative institutional regimes correspond to the differences lodged within the respective conceptions of citizenship and personhood.

The theories of many modern liberal political philosophers typically present a stark contrast to the obviously illiberal and discriminatory policies found in Aristotle's political theory that ultimately account for and explain its repugnancy to modern readers. Despite these obvious differences, however, modern liberal philosophers share one important methodological similarity with Aristotle's political theory and can actually be read as following the model first introduced by Aristotle. What we see in Aristotle's political theory is that those human beings who are capable of being citizens (free men) have a higher moral status than all other human beings (free

³⁴Rawls, John. *Political Liberalism*. New York: Columbia University Press, 1993, p. 18.

³⁵I will say more about this connection in the following subsection. Here I want to highlight only two points. (1) The connection between a theory of the good and essential features of citizenship or personhood becomes more significant when the theory of the good is itself robust and substantive. In liberalism, a thin and pluralistic conception of the good leads to a generic formulation of citizenship and personhood, in terms of "having the capacity to form and pursue a life plan." (2) In general, more needs to be said about the way in which a political philosopher connects the two. Is the development of the capacities central to citizenship instrumental or constitutive of the good life? These are questions that can be answered only within the context of a philosopher's political theory.

women, and male and female artisans and slaves), as for Aristotle there is an important connection between merely possessing the capacity for citizenship and having a higher moral status (or any at all!). Indeed, the most important moral distinction for Aristotle is not between man and woman or free and slave, but it is between citizen and non-citizen. In order to see this connection more vividly it's important to have some sense of Aristotle's general conception of the nature or purpose of society (the polis) as well as the citizens' function within the polis. For Aristotle, as for contemporary liberal philosophers, it becomes evident that the very purpose of the state and society is the development and cultivation of those capacities necessary for citizenship. What the following analysis should show is (1) that having a higher moral status depends on an individual's possession of the capacity relevant for performing the function of a citizen, and (2) it is Aristotle's functional conception of citizenship that ultimately provides the justification for specifying the morally relevant capacity—practical reason—that grounds the higher moral status.

1.2.1 Citizenship in Aristotle's Political Theory

According to Aristotle, the purpose of the polis is much more involved than merely providing suitable conditions for individuals to acquire and secure many of the necessities needed for survival. While the polis does indeed perform this more basic function, its primary function is to make possible the good life for those capable of achieving it (*Politics* I.1.1252a3-6, 2.1252a29-31, II.1.1260b1-2) For Aristotle whether an individual currently counts as a citizen, or at the very least possesses the capacity to count as a citizen, determines whether that individual can be properly said to participate in the good life and to benefit from the polis (*Politics* III.7.1279a33-34). In this vein Aristotle draws a distinction between those inhabitants who simply live *in* the polis compared to those inhabitants, the citizens, whom he describes as

constituting *part* of the polis (*Politics* III.1.1274b39-1275a1). Women, slaves, merchants, and artisans all live within the polis, but because Aristotle thinks that they all fail to qualify as citizens—indeed, as we will see, he thinks that this failure stems from an absence in the very capacity needed to be a citizen in the first place—he does not think that they constitute actual members of the polis. These groups do perform many of the essential and unglamorous functions needed for the daily operation of the polis with their labor and business, and in doing so create the opportunities for leisure necessary for the citizens to participate in politics to ensure that the polis as a whole performs its primary function. On the other hand, the contribution of each citizen to the development and stability of a just polis through his own political participation thereby helps to promote the good of every other citizen in the polis as well. In this way the efforts of each citizen when taken collectively fashions a conception of society as a system of mutual advantage.³⁶ It's worth emphasizing that this system of reciprocity is constricted only to the citizens, and that the relationship between the citizens and non-citizens reflects a hierarchical one where the non-citizens work to benefit and promote the interests of the citizens. The interests of all non-citizens, who are incapable of achieving the good life, are incomparable to the interests of the citizens who are capable of achieving the good life. As a consequence, the non-citizens can be said to benefit, if at all, only in the sense that the polis better provides and secures the resources needed for basic survival, and not the good life, in comparison to the pre-political communities out of which the polis originally arose.

The distinction between citizen and non-citizen thus plays a central role in Aristotle's political theory. As we have seen, the purpose of the polis is to secure the interests of a select group of members in society, namely the citizens, through the labor and effort of entire groups of human beings who possess explicitly inferior interests of their own. And while all of the non-

³⁶Miller, Fred. *Nature, Justice, and Rights in Aristotle's Politics*. Oxford: Clarendon Press, 1995, p. 17.

citizens contribute to the polis by supplying many of the services required for its operation, in what manner can the citizens be said to contribute to the polis? Understanding the role that Aristotle envisions for the citizens in the polis will help explain why he picks out the particular capacity that he does as the one the required for citizenship.

As with most terms in his philosophical framework, Aristotle defines “citizen” by its function (*Politics* I.2.1253a23-24). In Book 3 chapter 1 of the *Politics* he provides the strict or unqualified definition of citizenship as he³⁷ who “shares in the administration of justice, and in offices” (III.1.1275a21-22). He then refers for convenience to the function of citizens simply as “ruling.”³⁸ By ruling Aristotle seems to mean participating in various political and judicial activities such as serving on juries, in assemblies, and in other administrative offices. In Book 4 chapters 14-16 Aristotle identifies the three central elements that comprise any polis: these include the deliberative, executive, and judicial elements. In Book 6 chapter 8 he describes in more detail the functions of these three branches. For example, there should be magistrates who govern many of the economic aspects of the polis by inspecting contracts, maintaining roads and public spaces, as well as collecting taxes. Citizens also have to sit on juries and should be capable of sifting through and weighing contrary evidence in order to determine guilt and met out punishment. Citizens should be capable of performing military functions as well as the offices required for the maintenance of religion. And most important, citizens should be capable of instituting laws meant to govern the entire polis.

³⁷I use the male pronoun in this case as Aristotle thinks that only men can be citizens.

³⁸Later on in chapters 4, 13, and 14, he expands the functional definition of citizenship to include both ruling and obeying. This addition does not affect my argument, as the citizens who may be currently obeying will one day be expected to rule. This means that at the very least they still possess the required capacity to rule, and only that they currently possess the capacity in a latent or undeveloped form. This is the important respect in which they differ from women, artisans, slaves who lack this required capacity for ruling altogether.

What sort of capacity would a citizen need in order to participate and perform these functions adequately? In chapter 4 Aristotle equates the virtue or excellence of the good man with the virtue or the excellence of the good ruler. The good man is good in virtue of having practical reason—a form of reasoning that both identifies the correct end of human action as well as the correct means for promoting that end (*NE* VI.5.1140a26-30, 6.1141b12-14, and chapter 9). Aristotle explicitly rejects the common assumption that practical reason pertains only to the interests of the individual; he argues that practical reason also pertains to issues concerned with the good of the polis as a whole (*NE* VI.8.1141b23-25). The good citizen is a good ruler in virtue of possessing practical reason. The good citizen thus needs practical reason applied on a more global scale in order to identify the correct good for the polis holistically as well as the correct means for implementing the appropriate laws and policies specifically designed for the promotion of that good (*Politics* III.4.1277b26). The good citizen needs practical reason even further for all of the activities mentioned previously and lastly, for correct and appropriate navigation through personal life.

Practical reason is necessary to be a *good* citizen, but is the *capacity* for practical reason necessary to be a citizen at all? In the example of kingship that Aristotle presents, a single individual rules, yet he continues to refer to other individuals as citizens despite their legal ineligibility to rule. These other citizens who are not legally eligible to rule still possess the relevant capacity or attribute required to rule and could do so if called upon.³⁹ But what about the citizens under the deviant regimes? Admittedly these citizens lack practical reason, continue to rule, and do so in their own interest rather than in the common interest. The citizens in the deviant regimes represent paradigm examples of failures in reasoning and deliberation. Not only

³⁹Woods, Cathal. "The Limits of Citizenship in Aristotle's *Politics*," *History of Political Thought*. 35(3)2014: 399-435, p. 407.

do they rule poorly by ignoring the interests of other citizens, but they also execute their rule according to an incorrect conception of the good: instead of structuring the polis to promote a life of ethically and politically virtuous activity, the ruling citizens in the deviant regimes often pursue conceptions of the good that center on and promote wealth, honor, pleasure, and other goods.⁴⁰ As a result, the criterion for citizenship under each deviant regime comes to reflect whatever value is mistaken for the good. In oligarchic governments, for example, the criterion for citizenship is wealth, whereas in democracies it is freedom (*Politics* IV.4.1290b1-4).

There is as of yet no indication that the failures in deliberation exhibited by the citizens under deviant regimes serves as an admission that these citizens lack the *capacity* to develop practical reason altogether. In fact, in addition to the separate criterion for citizenship proposed under each regime, Aristotle never appears to discard the functional definition of citizenship for citizens even in the deviant regimes and instead continues to emphasize the connection between possessing the capacity that allows individuals to take part in deliberative or judicial administration in *any* state and being a citizen (*Politics* II.1.1275b19-21). It would be odd for Aristotle to ignore suddenly the functional definition in the deviant regimes; while the criterion for citizenship will be relative to each regime, the citizens are, after all, still expected to rule and perform many of the same general functions. It's just that in the deviant regimes, the citizens happen to perform these functions poorly because they lack practical reason. So while the deviant regimes introduce an additional criterion for legal eligibility to rule—whereas in the ideal city the criterion for eligibility matches the functional purpose—citizens maintain the same function. The proposed criterion for citizenship in each of the deviant regimes ignores whether an individual actually possesses the relevant skill (practical reason) which allows him to rule *well* in favor of some other criterion, but a citizen must still rule.

⁴⁰Ross, Sir David. *Aristotle*. New York: Routledge, 1995, p. 260.

Moreover, Aristotle's comments on education suggest that in the deviant regimes the citizens' failures in deliberation are a consequence of circumstance rather than a permanent deficiency in nature. The citizens under deviant regimes possess the capacity for practical reason as part of their nature but deliberate incorrectly concerning the true conception of the good and the best means suited for promoting that good because of circumstances, culture, and education (*Pollitics* IV.9.1294b22-25, 1295b16-22, VIII.1.1337a12-16). Education is the most important tool for maintaining societal stability by inculcating the citizens with the dominant values embedded in the constitution: "The best laws, though sanctioned by every citizen of the state, will be of no avail unless the young are trained by habit and education in the spirit of the constitution, if the laws are democratic, democratically, or oligarchically, if the laws are oligarchical" (*Politics* V.9.1310a15-19). In this manner the character of the citizens in each regime generally tends to mirror the type of constitution under which they live: "The character of democracy creates democracy, and the character of oligarchy creates oligarchy" (*Politics* VIII.1.1337a16-17). In the deviant regimes the citizens inculcate the wrong set of values and consequently pursue the wrong ends in the wrong ways.

The role of education is significant as throughout the *Politics* Aristotle repeatedly emphasizes the importance of education in developing our latent capacities and our nature (VII.15). Without the proper sort of education, many beneficial aspects of human nature would go undeveloped, and many deleterious elements of human nature that would typically require repression may flourish.⁴¹ Our capacity for practical reason is one of those elements of human nature that can be developed into a skill only under auspicious conditions. Terence Irwin writes that "prudence [practical reason] requires our capacities to be turned in the right direction. Until

⁴¹Annas, Julia. "Aristotle on Human Nature and Political Virtue," *The Review of Metaphysics*. 49(4)1996:731-753, p. 734.

someone is virtuous he has only an aptitude for prudence, not prudence itself.”⁴² Developing the natural capacity for practical reason into a skill that can be implemented in both daily life and political life requires an educational system that inculcates the proper conception of the good, the proper set of values, and the means for identifying those values. It stands that if the citizens of deviant regimes had grown up in circumstances with the right sort of models to imitate and the appropriate educational framework then they presumably would have been able to deliberate and reason to the correct conception of the good and to act in an ethically virtuous manner. If this is so, then it would appear that under the right conditions and with the right sort of education, the citizens under deviant regimes would have developed the practical reason necessary to be good citizens—citizens who rule not only in the common interest but according to the correct conception of the good. In other words, the underlying failure and Aristotle’s criticisms of citizens of deviant regimes does not reflect any inadequacies inherent in their nature as human beings, but instead, represents an indictment against the social milieu under which they have lived and developed as individuals.

This conclusion not only emphasizes the central place that the distinction between citizens and non-citizens holds in Aristotle’s political theory, but it also illustrates the basis for the distinction. All citizens either possess practical reason, or at the very minimum, possess the capacity to develop practical reason, whereas all non-citizens lack altogether the very the capacity to develop practical reason. Aristotle thus excludes free women, artisans, and slaves from the polis based on what he believed to be natural differences between these groups and the free men who could be citizens (*Politics* I.2.1252a30-36, I.3.1253b20-24, I.5). Aristotle lumps free women, artisans, and slaves all into the non-citizen category because he thought that all of

⁴²Irwin, notes for the *Nicomachean Ethics*, p. 253

these groups lacked the capacity—or more generally, the sort of raw materials or “mere nature”⁴³ that different humans and animals initially start with—to develop practical reason.⁴⁴ Any failure in deliberation that we might observe on the part of free women, artisans, and slaves is not supposed to be explained by negative influences exerted by the environment, which could be amended by altering the external conditions to foster the appropriate sort of development, but are supposed to reflect instead, differences in the natural capacities, the internal “materials,”⁴⁵ that these groups of human beings possess, or more accurately in this case, happen to lack.

While some of the practical implications of the natural differences that Aristotle believed to exist between different human beings have been alluded to previously, they deserve fuller explanation. Because free women, artisans, and slaves lack the mere nature to develop practical reason Aristotle holds that they cannot qualify as citizens and do not as a consequence form part of the polis. Furthermore, because they lack this capacity, providing them with education would be a waste of resources and time. For Aristotle the hierarchy between citizens and non-citizens means that the interests of non-citizens, if they can even be said to have interests at all, do not matter from a moral standpoint. This is why Aristotle, contrary to modern beliefs, finds it acceptable to have entire groups of human beings whose only purpose is to serve and promote

⁴³The term is Annas', p. 734.

⁴⁴It's important to emphasize that this appears to be what Aristotle believed, as it's not altogether clear whether his few remarks on the nature of free women, artisans, and slaves are actually consistent with this belief. Some commentators argue that his remarks are inconsistent and his political theory therefore unjustifiably excludes free women and artisans from citizenship. For this argument on the topic of women see Eve Cole Browning, "Women, Slaves, and 'Love of Toil' in Aristotle's Moral Psychology" in *Engendering Origins: Critical Feminist Readings in Plato and Aristotle*. Ed. by Bat-Ami Bar On. Albany: SUNY Press, 1994, 127–44, especially page 137. On a similar argument on behalf of the artisans see the article by Annas, previously cited. For an argument that could perhaps be extended even to slaves see Malcolm Heath, "Aristotle on Natural Slavery," *Phronesis* 53(2008): 243-270.

⁴⁵It's also not clear what sort of metaphysical claim Aristotle is actually making here, as the capacity for reason does not have any corresponding physical organ. See Deborah Modrak, "Aristotle: Women, Deliberation, and Nature," in *Engendering Origins: Critical Feminist Readings in Plato and Aristotle*. Ed. by Bat-Ami Bar On. Albany: SUNY Press, 1994, 207-221, p. 208.

the interests of a privileged few.⁴⁶ Not only are the interests of non-citizens not comparable and plainly inferior to the interests of the citizens, but it's not always clear to what extent non-citizens are even thought to have interests of their own. In the case of slaves for example they are "part" of the master and thus share the master's interests (*Politics* I.6.1255b11-14). And in an even more jarring example that highlights the significance of moral status and a consequence of its absence, while Aristotle thought it better to reason with slaves, he also refers to them as nothing more than instruments or tools used for furthering the interests of the master (*Politics* I.4.1253b32-34, I.5.1254b24-26).

Free women are not in the same desperate position as slaves as evinced by the tendency to refuse to recognize the possession of any interests at all. In fact, Aristotle draws a distinction between the different types of rule that exist between master and slave compared to the rule between husband and wife. The rule between master and slave differs from the rule between husband and wife in that the latter is an example of constitutional rule—a rule between equals. Yet the constitutional rule between husband and wife serves as an exception to normal examples of constitutional rule in that the husband and wife refrain from ruling in turn because of the relevant differences in nature between the sexes.⁴⁷ Aristotle insists that rulers and subjects are defined by different functions and maintain different forms of excellence, and as long as the distinction between ruler and subject reflects a rigid and natural hierarchy between free men and free women, then the excellences of free men and free women will differ in the same way. Just as the temperance or justice of a ruler differs from the temperance or justice of a subject, so too do

⁴⁶"From the hour of their birth, some are marked out for subjection, others for rule" (*Politics* I.5.1254a22-23).

⁴⁷What complicates the matter slightly is Aristotle's remark that in most examples of constitutional rule, where the nature of the citizens is equal and they take turns in ruling, society attempts to create a "difference of outward forms and names and titles of respect." The implication is that these outward differences do not mirror any substantive internal differences. Aristotle then proceeds to classify the relation between male and female in this way. This seems to be in tension with what he said just several lines before in which there is by nature a difference between male and female, which makes the male more fit to rule.

these virtues differ for free men and free women. As a result, Aristotle never explicitly mentions what sort of interests he takes free women to have. Nonetheless, insofar as the wife and slave share the similar duty of executing the orders commanded by the husband, then the function of both, as mentioned previously, is to act in such a way that secures the necessities of life for the husband so that the husband need not concern himself with such trivial activities and can instead focus on more pressing political matters (*Politics* I.7.1255b33-35). Certainly, Aristotle does not believe practical reason necessary for performing these functions. Whatever interests Aristotle takes free women to have they are clearly subordinate to the interests of the citizens of the polis.

Central to Aristotle's political theory then is the distinction between citizens and non-citizens. For those human beings who lack the capacity for citizenship there follows a diminution in their status as human beings; their interests, if they have any at all, summarily matter only insofar as they help promote the interests of the privileged few who do possess the relevant capacity to function as citizens and achieve the good life. The function that a citizen performs in the polis both determines and explains why the capacity to develop and exercise practical reason is so important to be a citizen. As a result, those who happen to lack this capacity by nature cannot perform the function of a citizen and are therefore relegated to a lower class of human beings.

1.2.2 Personhood, Citizenship, and the Liberal Ideal

The political theories of modern liberal philosophers differ obviously in many important respects from Aristotle's political theory. One such important respect in which they differ is their rejection of Aristotle's conception of the good life as well as anything that approaches that conception in its details. As a result, the essential features imbedded within their conceptions of citizenship, or personhood, are formulated differently. Yet in spite of this marked difference,

modern liberal political philosophers share with Aristotle the supposition that the aim of the state and society more generally lies in its protection and development of the essential interests and capacities of citizens and, whether directly or indirectly, the good life for its citizens. What differs in the theories of liberal political philosophers when compared to Aristotle's political theory is not a rejection of the general claim that the purpose of society is to promote the development of citizenship, however that may be conceived, but the difference manifests itself in a commitment to a pluralistic and thinner conception of the good life, which influences, in turn, the essential features of personhood and citizenship identified by liberal political philosophers.

Indeed, the hallmark liberal commitment to a pluralistic conception of the good leads liberal philosophers to define the good formally. That is, in a liberal society, the ideal of the individual leading a life of her choosing—the autonomous, self-determining, or self-governing individual—leads liberal philosophers to formulate the good in terms of the capacity to form and pursue a life plan.⁴⁸ The liberal ideal of autonomy or self-determination holds the most fundamental place in liberal political philosophy, and disagreements over the worth of liberty and its scope really mask disagreements part of how we are to understand the nature of autonomy and what it ultimately means for an individual to live a life of her choosing. A commitment to a pluralistic conception of the good requires that the state and society be organized in such a way as to foster conditions that enable the development and exercise of the autonomy or self-determination—the capacity to form and pursue a life plan—of citizens, and in doing so, society thereby succeeds in the promotion and the fulfillment of their good.

⁴⁸Notice how philosophers from very different liberal political traditions tend to describe this ideal, at least ostensibly, in very similar terms. John Stuart Mill describes it in terms of “pursuing our own good in our own way.” Rawls: “To form, revise, and pursue a life-plan.” Tomasi: “To develop and act on a life plan.” Hayek: “Using one’s own information in pursuit of one’s own ends.” And even Nozick: “A person’s shaping his life in accordance with some overall plan is his way of giving meaning to his life.”

Before proceeding to discuss the ideal model of autonomy more closely, one important qualification is necessary. While liberal philosophers may hold as Aristotle does that the purpose of society is to promote the citizens' ability to live a good life, Aristotle envisioned that the state would play a direct role in producing the desired end by exerting a large degree of control over the lives of its citizens and by dogmatically controlling the various influences that they were exposed to in order to ensure the citizens' proper moral development. However, continual paternalistic interference in order to preserve or maximize the future autonomy of citizens in a liberal democratic society would only inhibit citizens' ability to lead an autonomous life. The very nature of the good in liberal society demands both conceptually and pragmatically a more "hands off approach." As a result, liberals deem it preferable to arrange what Rawls calls the "basic structure" of society—the various institutions like the market, family, legal and political institutions, and other social institutions that compose society—according to rules designed to produce conditions hospitable for the development and exercise of individual autonomy without relying on continual paternalistic interference from the state or society over the actions of individuals within their daily lives.

1.2.3 Autonomy as a Framework

The discussion cannot proceed any further without closer inspection of the liberal ideal of autonomy. Autonomy is a nebulous concept and frequently plays a multitude of roles within the theories of different philosophers who often attribute it with different shades of meaning depending on their purposes. For these reasons and others the general literature on autonomy continues to grow at a rapid pace and cannot be covered in detail here. Insofar as I identify the term "autonomy" with the liberal ideal of an individual living a life of her own choosing, I employ the term in an admittedly idiosyncratic manner. Instead of identifying some necessary

and sufficient conditions that belong to the concept as many philosophers writing on autonomy are fond of doing, my aim is to present a framework comprised of components with further dimensions along which liberal philosophers from various liberal traditions can select as part of their interpretations of the ideal. The concepts of personhood as employed by the various liberal traditions present different formulations of the autonomous or self-determining individual—of what it ultimately means for an individual to live a life of her choosing. And as mentioned in the preceding paragraph, these philosophers view the purpose of society as the promotion of the ideal of personal autonomy by providing the conditions that foster the development and exercise of an individual's ability to both form and pursue a life plan.

The concept of autonomy includes in this case two complimentary components: the formation of a life plan and the pursuit of that life plan. These two aspects of autonomy can be described more specifically as expressing a cognitive component and an action component. The cognitive component is commonly described in the literature as including “procedural independence.” Procedural independence refers to the process of second-order critical reflection meant to evaluate the desirability of holding various first-order desires, beliefs, opinions, and so on. As one example Gerald Dworkin defines autonomy as the “second-order capacity of persons to reflect critically upon their first-order preferences and the capacity to accept or attempt to change these in light of higher-order preferences or values.”⁴⁹

At the very least, the cognitive component of autonomy requires competency. Competency refers to an individual's ability to engage in a process of critical reflection. Meaning that for an individual to be procedurally independent the individual must possess various sophisticated cognitive capacities that allow for a process of critical reflection to occur. These

⁴⁹Dworkin, Gerald. *The Theory and Practice of Autonomy*. New York: Cambridge University Press, 1988, p. 20.

capacities include at a very general level the ability for self-conscious and rational thought, and at more specific levels, freedom from debilitating cognitive pathologies.

The value of procedural independence lies in its manifestation and expression of self-control and independence. An individual who lacks the capacity or fails to engage in critical reflection in the formation of her desires and life plan may do so because she has succumbed to the pull of various natural impulses that end up dictating her beliefs and behavior in undesirable ways (as in cases of weakness of will) or she may have allowed external influences exerted by the media or popular opinion (this was Mill's concern throughout much of *On Liberty*) to form her beliefs and dictate her lifestyle. Procedural independence represents an ideal towards which an individual may strive, and she exerts self-control and independence over the formation of her beliefs and choices—including which life plan to pursue—to the extent that her beliefs and choices are free from internal impulses and biases as well as external pressures. To the extent that an individual's choices are free from both internal and external influences the resulting beliefs can with greater degrees of appropriateness be described as “her own.”⁵⁰ Procedural independence thus establishes an effective sense of independence and responsibility on behalf of the individual in the formation and adoption of a particular life-plan.⁵¹

The process of critical reflection by which the individual evaluates her first-order preferences does not always have to occur as caricatured by the detached, objective, and conscious observer diligently creating a pro and cons list for pursuing some life plan separate from and antecedent to action. Critical reflection often occurs simultaneously with action when

⁵⁰Insofar as many psychological biases and heuristics are part of being a human being and insofar as human beings are located within various cultural and social circumstances it would be impossible to remove ourselves entirely from the influence of those biases. But the ideal of autonomy comes in degrees, and the individual approaches that ideal the more she is able to reduce the influence of psychological, cultural, and social biases.

⁵¹Lawrence Haworth describes this effect as “backing” through which the individual forms a conception of the self. See his *Autonomy: An Essay in Philosophical Psychology and Ethics*. New Haven: Yale University Press, 1986, p. 52.

an individual engages in some task sensitive to feedback from acknowledged obstacles and adjusts her behavior according to some overall strategy.⁵² What ultimately matters in determining the degree of autonomy on this model is the nature of the process of critical reflection that the individual undergoes in constructing a life plan and in making decisions in following out that life plan.

The connection between autonomy and liberty within the cognitive component of autonomy thus becomes more salient: the individual not only has to have the mental freedom to consider different beliefs and life plans, but in order to be autonomous, the individual also has to exercise those mental freedoms. Freedoms like liberty of thought, speech, publication, and association are pivotal if individuals are going to develop and exercise their autonomy in evaluating and choosing over diverse life plans. In this sense these freedoms are not sufficient for autonomy but provide some of the necessary conditions for its exercise.

As we will see, one very important difference that separates the liberal traditions is how robustly each understands this cognitive aspect of autonomy. Some of the more “left-leaning” liberals such as Rawls and Mill place more emphasis on this aspect of autonomy, while some of the more “right-leaning” liberals such as Ludwig von Mises and Friedrich Hayek will often take the preferences and desires of individuals as a given with no consideration or concern for their genesis. One consequence of this difference is the way in which liberals will ground particular freedoms within their conceptions of persons. For example, because Rawls and Mill both place a large emphasis on the cognitive component of autonomy as playing a significant role within their

⁵²For more on the distinction between these two modes of critical reflection see Haworth, pp. 22-25. The two models of critical reflection seem to be more appropriately described as applying to a global versus a local scale. So we may expect that the autonomous individual engages in a process of reflection that precedes action when determining what sort of life plan to follow in the first place, but in following that life-plan and in dealing with difficulties and obstacles, the individual may then engage in the second model, unless those obstacles generate a need to reevaluate the life plan as a whole.

conceptions of persons insofar as they find it valuable for individuals to construct a life plan after engaging in a process of critical reflection, their primary reason for grounding the relevant freedoms are considerations germane to this component of autonomy.

For some philosophers, however, procedural independence remains insufficient for the exercise of autonomy. Procedural independence pertains only to the process by which individuals come to make decisions in their lives and ignores altogether the content of those decisions and can, as a result, be compatible with decisions that forgo future opportunities for the exercise of autonomy.⁵³ In other words, an individual could autonomously decide to concede all future decisions to the judgment of some other authority. Confining the cognitive component of autonomy exclusively to the exercise of procedural independence while denying that the content of an individual's autonomous choices must incorporate some specific content, such as the future exercise of autonomy, retains the neutrality of the idea and makes it compatible with a wide number of diverse life plans.⁵⁴ In this sense what individuals decide is less important than how they decide. However, a stronger interpretation of autonomy insists that in addition to the exercise of procedural independence, substantive independence also plays a central role in the exercise of autonomy; individuals are autonomous not only when their decisions are procedurally independent but also when the content of their decisions ensures the future exercise of autonomy as well. In this case, what individuals decide is as important as how they decide. The requirement of substantive independence diminishes the neutrality of autonomy and favors life plans that require the continual exercise of autonomy to those that permit its relinquishment.

⁵³Dworkin, p. 23.

⁵⁴Dworkin, p. 31.

The second component of autonomy, or self-determination, concerns the connection between autonomy and liberty in action rather than liberty in thought.⁵⁵ Whereas we can think of the first component of autonomy focusing primarily on an individual's ability to *form* or *revise* a life plan the second component concerns an individual's ability to *pursue* that life-plan. Philosophers who write on autonomy typically draw a distinction between autonomy and freedom and in doing so attempt to demarcate the proper bounds of each. A consequence of the distinction is that it confines autonomy conceptually to the cognitive component so that an individual's autonomy depends solely on the formation of a life plan; in other words, an individual's autonomy consists singularly in and to the extent that the formation and adoption of a life plan accords with procedural independence (and perhaps substantive independence) and nothing else. On this line of thought an individual remains autonomous even when unable to pursue the chosen life plan either when coercively prevented from doing so (a violation of negative freedom) or when lacking the opportunities or resources required to do so (an absence of positive freedom).

My interpretation incorporates both of these aspects under the conceptual apparatus and framework of autonomy itself. To what extent can an individual be autonomous or self-determining when prevented from implementing a life plan into action? Autonomy perceptibility diminishes in value if it pertains only to the formation and adoption of life plans and not to the pursuit of life-plans. An individual is autonomous or self-determining when the autonomously formed life plan presents an end by which the individual can actually pursue and strive towards. As with the cognitive component of autonomy then, the connection between liberty and the ability to pursue a life plan becomes important. In this case, however, the issue centers on what

⁵⁵See R.S. Downie and Elizabeth Telfer. "Autonomy," *Philosophy*. 46(178)1971: 293-301 for a denial of the distinction that I draw here.

type of freedom is necessary and sufficient for pursuing carefully selected life plans. Which type of freedom—merely negative or positive—does the second component of autonomy require?

As we will see in the subsequent chapters each of the three liberal traditions canvassed—the high liberals, the market democrats, and the libertarians—offers its own interpretation of both components of autonomy, their interaction, and what it means ultimately for an individual to be self-determining. The framework presented here is meant to illustrate the conceptual categories and the dimensions that harbor areas for imminent dispute among the liberal traditions. As mentioned before, this means that liberals will not ground freedoms by appeal to similar considerations. Insofar as their conceptions of persons highlight different dimensions then the connection between the conception of persons and certain freedoms will tend to run along different sets of considerations, as I pointed out above in the case of Rawls and Mill. Within the cognitive category for example, some philosophers at one extreme may argue that autonomy in thought requires both procedural and substantive independence and so ground particular freedoms by appeal to those considerations, while philosophers at the other end many deny the importance of even procedural independence altogether and so appeal to an entirely different set of considerations as part of this ideal in order to ground the very same freedoms. Similarly, the second component of the ideal then tracks disagreements inherent in the concept of freedom: is a more negative and formal conception of freedom sufficient for autonomy or is a more positive and substantive conception required? In some cases being a self-determining individual where an individual is able to lead a life of her own choosing means possessing a minimal amount of resources, whereas on other accounts the same ideal is formulated in the very possibility of abnegating legitimately that capacity to another individual! Whereas all of the liberal traditions are committed to the liberal ideal, and where this similarity is reflected ostensibly in their

characterization of personhood as requiring the capacity to form and pursue a life plan, each tradition can be understood as providing different interpretations of that capacity by combining the distinct components and dimensions of the liberal ideal in different ways and with greater or less depth.

In addition to the capacity for autonomy liberal political philosophers tend to include within their conceptions of persons a capacity to act according to the rules of justice.⁵⁶ This second capacity highlights a citizen's ability to recognize the moral and legal status of other citizens in society as the bearers of legitimate claims that appropriately limit the scope of an individual's own activity. An individual's willingness to adjust his or her own conception of the good according to the constraints laid out both by the principles of justice and the laws and legal institutions that govern society reflect a commitment to fairness and reciprocity.

As we have seen, in the political philosophy tradition beginning with Aristotle and continuing on with modern liberal political philosophers, and in contrast to moral philosophy, the possession of a higher moral status is connected to the notion of citizenship and the "functions" that a citizen is expected to play or the aims and capacities that a citizen might have in modern society. The properties *necessary* to be a person and to possess the higher moral status of personhood are identified with the capacities of citizenship. In a modern liberal democratic society, a citizen, and so a person, should possess the capacity for some degree of autonomy (however that comes to be construed within the particular liberal tradition) and the capacity for a "sense of justice" (at least on some accounts). Because persons and citizens are intimately connected political philosophers continue to model their conceptions of personhood based on the

⁵⁶For example, the second moral power that Rawls attributes to citizens is the capacity to form and adjust a conception of the good as constrained by the principles of justice. John Tomasi includes a similar capacity in his conception of persons in highlighting a citizen's ability to recognize other citizens as self-authors who generate their own legitimate claims as rightly limiting my own actions. See *Free Market Fairness*. New Jersey: Princeton University Press, 2012, p. 40.

identification of some necessary properties, and in doing so, present a marked contrast to the employment of the concept within the moral tradition, in which it has been typically implemented as a tool for demarcating among varying levels of status for different entities.

The concept of personhood also plays a more substantive role in political philosophy than it does in moral philosophy. Political philosophers operating within each of the liberal traditions employ some version of the liberal ideal of the autonomous individual in order to determine, and justify, the list of basic rights—those rights meant to secure, protect, and promote the exercise of citizens’ fundamental interests, which, in this case, are the interests citizens maintain in developing and exercising their capacity for autonomy. Some of these basic rights include the capitalist economic liberties. These include the freedoms to use labor in production under terms freely negotiated; freedom of occupational choice; the freedom to manage household economic affairs, including the freedom to start and run a business; the freedom to acquire, hold, and use property for commercial and productive purposes; and the freedom to use legitimately acquired resources for consumption and production.⁵⁷

The central thesis of the dissertation is that these philosophers who engage in this method must confront a dilemma. The more thickly they imbue their conceptions of persons with the various dimensions part of the framework of autonomy, then the more they trivialize the derivation of the basic structure by begging the question. If, for example, a conception of persons is designed, at this level, to reflect a negative conception of freedom in its very formulation, then a Nozickean minimal state naturally follows. But then it’s no longer clear what sort of role the conception of persons really plays. To avoid begging the question and therefore trivializing the derivation, some philosophers might attempt to offer a thinner account of personhood; in doing

⁵⁷Nickel, James. “Economic Liberty,” in *The Idea of a Political Liberalism: Essays on Rawls*. Ed. by V. Davion and C. Wolf. The Maryland: Rowman & Littlefield Publishers Inc., 2000, 155-175, pp. 156-157.

so they leave their conceptions susceptible to the possibility that they may support contradictory and contrary conclusions, which increases the level of confusion concerning their role in political theory.

In the next chapter I discuss the conception of persons found within Rawls' political theory—justice as fairness. Rawls excludes the economic liberties from his list of basic rights, and I argue that his conception of persons can be understood as requiring elevating the capitalist entrepreneurial liberties to the list of basic rights.

2 Constructivism, Rawlsian Persons, and the (Capitalist) Economic Liberties

In a recent article Samuel Freeman observes that variations within the institutional schemes advocated by political philosophers within divergent liberal traditions stem from conceptual differences found within their respective conceptions of persons.⁵⁸ In recent decades this sort of constructivist procedure—that of grounding the specification and arrangement of society’s institutions in a conception of persons—has received increased favor among political philosophers from diverse, and even reputedly antagonistic, strands of liberal thought. That high liberals, in contrast to libertarians or even classical liberals, support a thinner set of economic liberties and property rights or conceive of equality of opportunity and freedom in more substantive rather than formal terms or question the legitimacy of largely unrestricted market outcomes or defend more robust social programs, can all be explained, in this method, by recourse to the conception of persons employed by high liberals such as John Stuart Mill and John Rawls. Whereas Mill and Rawls appeal to a progressive ideal of persons, libertarians, such as Robert Nozick, envision persons as self-owners; market democrats, such as John Tomasi, view them as self-authors; and lastly, classical liberals, including David Gauthier and Richard Epstein, tend to view them as rational utility maximizers. In each case the conception of the person serves as the basis for determining the structure and the rules of the social, economic, and political institutions, including the scheme of basic rights and liberties. This surge in popularity over constructivist arguments has led Samuel Freeman to remark:

If there is any progress to be made in debates about the importance to liberalism of capitalism, robust private property rights, and the essential role of markets in establishing economic justice, it will require awareness and discussion of the different and conflicting

⁵⁸Freeman, Samuel. “Capitalism in the Classical and High Liberal Traditions,” *Social Philosophy and Policy Foundation* 28.2 (2011): 19-55.

ideals of persons and their social relations that liberals implicitly rely upon in the positions they advocate.⁵⁹

The thesis of the dissertation is that the viability of constructivism as a legitimate method of doing political philosophy is threatened by a serious dilemma. On the one hand, some of the conceptions of persons (such as libertarian self-ownership) are so thickly construed that they beg too many questions and in doing so undermine whatever normative conclusions advocates sought to derive from their respective conceptions. On the other hand, the thinner that a political philosopher makes her conception of personhood in order to avoid begging any questions, the easier it becomes to derive contradictory conclusions. And by abolishing the (nearly) linear relation between a conception of persons and an institutional regime, we also enervate the device's evaluatory or justificatory capacity. We cannot appeal to a conception of persons both to determine *and* to garner support for normative conclusions regarding how the social, economic, and political institutions in society ought to be arranged, insofar as the device's justificatory capacity depends on its ability to determine some accordant institutional regime.

In this chapter I focus in particular on the second horn of the dilemma in the context of John Rawls's political theory—justice as fairness. He argues that his conception of persons requires elevating civil and political, but not (capitalist or socialist) economic liberties, to basic rights. I argue, however, that if we begin with Rawls's own premises, we can show, contrary to his own position, that his conception of persons actually requires elevating the capitalist entrepreneurial economic liberties, alongside the civil and political liberties, to basic rights.

To do so the chapter is outlined as follows. In the first section I lay out the ideas central to Rawls's political theory. Because Rawls never provided any explicit arguments for excluding

⁵⁹Freeman, p. 55.

the economic liberties, in the second section I offer arguments on his behalf and then proceed to point out why these arguments prove to be insufficient. In the third section I offer my own positive argument for why his conception of persons requires elevating the entrepreneurial economic liberties to basic rights. I conclude the chapter by responding to an objection against my argument.

2.1 Persons and Basic Rights

2.1.1: Rawls's Conception of Persons and the Original Position

Rawls envisions society as a system of social cooperation where social and political relations among individuals are conducted on a basis of equal respect, reciprocity, and mutual benefit. In following the footsteps of a tradition first established by ancient philosophers such as Aristotle, Rawls connects the concept of a person, and the consequent higher moral and legal status normally attributed to persons, to someone capable of engaging in social and political life; he identifies, in other words, persons with citizens.⁶⁰ To be a fully cooperating member of society persons, or citizens, must possess two capacities or moral powers.⁶¹ The first moral power that Rawls identifies is the capacity for an effective sense of justice, which includes the capacity to understand, to apply, and to act from the principles of justice; the second moral power is the capacity to form, revise, and pursue a conception of the good.⁶²

Rawls then attempts to connect his idealized conception of persons with the two principles that form part of justice as fairness through the choice mechanism confronting parties

⁶⁰See footnote 34, p. 28.

⁶¹Here we see the contrast, introduced initially in the previous chapter, between how the general concept of personhood has been employed in the political tradition as opposed to the moral tradition. Whereas in the moral tradition the use of the concept has impelled moral philosophers to abandon specifying it in terms of some necessary conditions, by connecting the concept to that of citizenship, many political philosophers continue to utilize the concept by identifying certain necessary conditions. This theme is repeated throughout the following chapters.

⁶²Rawls, John. *Justice as Fairness: A Restatement*. Cambridge, Massachusetts: Harvard University Press, 2001, pp. 18-19. Hereafter, *JAF*.

in the original position. These parties are responsible for choosing principles of justice that are supposed to regulate the social, economic, and political institutions within society and to establish thereby the fair terms of social cooperation for all citizens. The original position embodies what Rawls describes as “pure procedural justice”⁶³: with no independent criterion of what is just or right, the constraints over the decision in the original position are designed to ensure a fair decision procedure, the outcome of which is both fair (hence why Rawls calls his conception of justice “justice as fairness”) and establishes in turn the criterion of what is to count as just or right. Now, in order to ensure that the decision over principles of justice is fair, the parties are forced to evaluate alternatives behind a thick veil of ignorance, that is, they are deprived of specifics regarding their position in society, their natural endowments and psychological propensities, and their determinate conception of the good. The veil of ignorance thus ensures that individuals are symmetrically situated and deprived of distinct bargaining advantages.

More important for our purposes, however, are the motivations held by the parties in the original position. After *A Theory of Justice*, Rawls goes on to distinguish between two forms of autonomy.⁶⁴ The parties in the original position are understood to be, by Rawls, only rationally autonomous rather than fully autonomous. Whereas full autonomy consists of activity in accordance with both moral powers and more accurately describes the behavior of citizens in a well-ordered society, rational autonomy incorporates the antecedent notion of autonomy found in *Theory*—that there are no prior principles of right that constrain deliberation—and maintains, in addition, that the parties’ deliberations are guided solely by considerations of their determinate

⁶³Rawls, John. “Kantian Constructivism in Moral Theory,” *Journal of Philosophy*. 77.9 (1980): 515-572, p. 523.

⁶⁴The sort of autonomy that Rawls describes in *Theory* focuses on the fact that the parties’ considerations in the original position are not constrained by any prior or independent notions of the right. This is not to be confused with how I’ve used the term so far. See *A Theory of Justice*. Oxford: Clarendon Press, 1971, pp. 513-520. Hereafter, *TJ*.

conceptions of the good.⁶⁵ The rational autonomy of the parties in the original position dictates that their motivations are structured only by concerns of rational self-interest. Now the veil of ignorance, as stated above, prevents individuals from gaining direct knowledge of their determinate conceptions of the good. How, then, does Rawls expect the parties to make any sort of rational decision without access to this information?

To address this problem Rawls attaches a hierarchy of interests that governs formally and exhausts the motivational content of the deliberators in the original position. According to this hierarchy, the parties all have a highest-order interest in developing and exercising their two moral powers. The parties also possess a third set of interests—that of promoting their determinate conceptions of the good—which functions in a subordinate manner to the development and exercise of the two moral powers.⁶⁶ It would be misleading to conclude from these comments that because the parties possess a highest-order interest in developing and exercising their first moral power—the capacity for an effective sense of justice—that they are also motivated by feelings of altruism or benevolence for other deliberators in the original position. The parties view the development and exercise of this moral power only as a means towards the promotion of their own determinate conceptions of the good:

But when the parties count, as a consideration in favor of certain principles of justice, the fact that citizens in society will effectively and regularly act upon them, the parties can do so only because they believe that acting from such principles will serve as effective means to the determinate conceptions of the good of the persons they represent.⁶⁷

⁶⁵Rawls, John. "The Basic Liberties and Their Priority," *Tanner Lectures on Human Values*. Delivered at the University of Michigan, 1981, pp. 20-21. Web. 26 July 2016. <http://tannerlectures.utah.edu/_documents/a-to-z/r/rawls82.pdf>.

⁶⁶Rawls, "Kantian Constructivism in Moral Theory," p. 525.

⁶⁷Rawls, "The Basic Liberties and Their Priority," p. 30 and p. 29.

The adherence to the rules and laws of society and therein the stability generally promoted by the principles of justice work in tandem to enhance the parties' ability to pursue their own conceptions of the good. They are interested in agreeing to principles that others could also agree to not because they are motivated by the well-being of others but because agreement and conformity to a set of principles makes pursuing their determinate conceptions of the good easier than conditions that would be prevalent in the baseline of non-agreement. In contrast to the first moral power, the development and exercise of the second moral power—the capacity to form, revise, and pursue a life plan—serves as both a means towards a person's good and forms part of that person's good as well.⁶⁸ By following the process of rational deliberation individuals are able to articulate and form a conception of the good, and this process also allows individuals to affirm, which constitutes an important ingredient of, the conception of the good they have selected. The arguments that Rawls employs for the basic rights depend ultimately on their necessary connection with the development and exercise of the two moral powers.

2.1.2 Argument for the Basic Rights: Liberty of Conscience

Guided by their highest-order interests in developing and exercising their two moral powers, the parties in the original position desire to establish a list of rights afforded special protection by the state. These basic rights, in light of their privileged protection, are not to be sacrificed for considerations of efficiency or general welfare, and the list is to include only those freedoms necessary for the adequate⁶⁹ development and exercise of the two moral powers. This is not to say that the basic rights may not be violated under any circumstances; permissible

⁶⁸Ibid., pp. 27-28.

⁶⁹Rawls rejects the notion that the moral powers are to be maximized. For a fuller discussion of the modalities involved, see Jeppe von Platz, "Are Economic Liberties Basic Rights?" *Politics, Philosophy, and Economics*. 13.1 (2013): 1-22, pp. 4-7.

violations of the basic rights for the sake of adjusting the entire list into one compatible scheme may occur in cases where the exercise of one basic liberty conflicts with another.⁷⁰

Rawls's most explicit and sustained arguments for the basic rights and their connection to the two moral powers center on the paradigm example of liberty of conscience.⁷¹ The moral power to form, revise, and pursue a conception of the good grounds liberty of conscience in two ways, each of which corresponds to the capacity's dual functions. Liberty of conscience plays an essential and instrumental role insofar as it allows the parties the opportunity to form and articulate a conception of the good by examining the alternatives open to them. In practice the volatile circumstances of life often spur the need for re-evaluation; liberty of conscience further allows individuals to amend their conceptions of the good in light of new obstacles and changing circumstances.⁷² The second way in which the moral power grounds liberty of conscience depends on "the broad scope and regulative nature of this capacity and the inherent principles that guide its operations (the principles of rational deliberation)."⁷³ What Rawls meant by the principles of rational deliberation will be discussed shortly. The general idea, in brief, is that the exercise of these principles of critical reflection inherent within the capacity enable individuals to affirm and stamp ownership over their determinate conceptions of the good. In his own words:

In addition to our beliefs being true, our actions right, and our ends good, we may also

⁷⁰For an early interpretation of how these conflicts are to be adjudicated see the influential paper by H.L.A. Hart, "Rawls on Liberty and Its Priority," *University of Chicago Law Review*. 40.3 (1973): 534-555, pp. 542-547. For Rawls's reply, see "The Basic Liberties and Their Priority," pp. 46-79.

⁷¹Rawls, *TJ*, pp. 205-211. The same arguments, almost verbatim, are also in "The Basic Liberties and Their Priority," pp. 25-29.

⁷²Rawls, "The Basic Liberties and Their Priority," p. 27.

⁷³*Ibid.*, pp. 27-28.

strive to appreciate *why* our beliefs are true, our actions right, and our ends good and suitable for us. As Mill would say, we may seek to make our conception of the good “our own”; we are not content to accept it ready-made from our society or our social peers.⁷⁴

Rawls thus proceeds in this fashion, and in most cases without explicit argumentation, to argue that the parties in the original position would identify the following list deserving protection under the first principle of justice:

(1) Freedom of Thought/Liberty of Conscience: Freedom of religious belief falls under this category, but it should not be identified with liberty of conscience, for reasons that will be explained later.

(2) Political Liberties: These include the freedom to vote, to run for political office, and freedom of speech and assembly.

(3) Freedom of Association

(4) Liberty and Integrity of the Person: These include protection from bodily and psychological harm, the freedom to use and hold personal property, freedom of movement, and freedom of occupational choice.

(5) Rights and liberties covered by the rule of law: These rights include freedom from arbitrary arrest and seizure as well as due process.

As we have seen, some of the rights and liberties, such as liberty of conscience, are connected to the capacity to form, revise, and pursue a conception of the good. Other rights and liberties, such as the political liberties, are connected to the development and exercise of the capacity for an effective sense of justice. And lastly, some rights and liberties, such as those that fall under the rule of law and integrity of the person, are not connected directly to either moral power, but are, according to Rawls, only instrumentally necessary for securing institutional arrangements

⁷⁴Ibid., p. 28.

necessary for the exercise of the other rights and liberties. Most conspicuous about this list, however, is the absence of many economic liberties.

*2.2 Economic Exceptionalism*⁷⁵

With exception to freedom of occupational choice and freedom of movement, Rawls notably leaves many of the capitalist economic liberties off the list of basic rights afforded special protection. The capitalist economic liberties include⁷⁶:

Liberties of Working: Freedom to labor and use labor in production, which includes the freedom to sell, buy, trade, and donate labor; freedom of occupational choice; and the freedom to negotiate terms of employment.

Liberties of Transacting: These are the freedoms to manage one's economic affairs at the household level, including the freedom to buy, sell, and make things, and to start, run, and shut down a business.

Liberties of Holding: These freedoms include acquiring, holding, using, and developing property for commercial and productive purposes.

Liberty of Using: The freedom to use legitimately acquired resources for consumption and production.

By excluding these liberties from the first principle of justice, Rawls allows for the possibility of legitimate state control or interference within the economic institutions found in society for the purpose of promoting social justice or other ends thought to be in congruence with the common good.

In order to be consistent with the rationale offered for the determination of the other basic rights, Rawls's argument must follow along the line that the capitalist (or the socialist) economic

⁷⁵The phrase is taken from Tomasi, p. 42.

⁷⁶Nickel, pp. 156-157.

liberties are not necessary for the development and exercise of the two moral powers, and with no necessary connection, the parties in the original position would not be motivated to elevate the capitalist economic liberties to first-principle status.

Rawls does not, unfortunately, offer any explicit argument designed to show that the capitalist economic liberties are not necessary for the development and exercise of the two moral powers.⁷⁷ In fact, he applies a different criterion altogether for justifying their exclusion. Early on in “The Basic Liberties and Their Priority” he distinguishes two methods for determining basic rights.⁷⁸ One method, as we have seen, is to connect the rights and liberties that would be necessary for some accordant conception of persons; the other method is historical. Under this method, the list of basic rights can be formulated after a careful survey—conducted not by participants in the original position, who lack this information, but by those of us, “you and me [Rawls],” setting up justice as fairness—of constitutions found within democratic states. While Rawls appeals to the first criterion in identifying the basic rights that fall under the first principle, he appeals to the second criterion to justify excluding the economic liberties. He remarks that “the history of successful constitutions suggests that principles to regulate economic and social inequalities, and other distributive principles, are generally not suitable as constitutional restrictions.”⁷⁹ However, in a bizarre and confusing manner, Rawls appeals once again to the conception of persons: “It seems more fruitful to look for bases of agreement implicit in the

⁷⁷Samuel Freeman offers an argument in defense of Rawls, namely, that elevating the capitalist economic liberties to the first principle would attenuate the value of the other basic rights and liberties, making it difficult for citizens to pursue their conceptions of the good. Jeppe von Platz responds, rightly in my mind, that the specification of the first principle is determined independently of the value or worth of this scheme, “Are the Economic Liberties Basic Rights?” pp.15-16. Furthermore, Rawls denies that justice of fairness is supposed to ensure the *value* or *worth* of any of the basic rights besides the political liberties. See “The Basic Liberties and Their Priority,” pp. 41-46. For an opposing argument see the article by Norman Daniels, “Equal Liberty and the Unequal Worth of Liberty,” in *Reading Rawls: Critical Studies on Rawls’ A Theory of Justice*. Ed. by Norman Daniels. California: Stanford University Press, 1989.

⁷⁸Rawls, “The Basic Liberties and Their Priority,” pp. 6-7.

⁷⁹*Ibid.*, p. 52.

public culture of a democratic society and *therefore in its underlying conceptions of the person and of social cooperation* (emphasis mine).”⁸⁰ Despite this inconsistency, we can conclude from these comments that the structure of the economic system is to be determined at the legislative stage within his political theory. Before offering a positive argument that connects the capitalist economic liberties to the conception of persons, I want in this section to further explore Rawls’s refusal to elevate these liberties to the first principle. There are two possible avenues that I want to consider in greater detail—neither of which justify, in my opinion, Rawls’s position of economic exceptionalism.

The first line of argument relies on the possibility of making a qualitative distinction between the nature of the civil and political rights and liberties included within the first principle of justice and the economic liberties that are excluded. If some substantive distinction exists between the civil and political rights and liberties in contrast to the economic liberties, then those differences could be appealed to in order to specify their unique relation to the moral powers and to justify their higher status. The question is, then, whether there exists any substantive qualitative distinction between the two sets of rights and liberties that justifies treating them differently.

If we return to Rawls’s paradigmatic liberty, liberty of conscience, we can identify some features inherent in its exercise. Regardless of what an individual’s determinate conception of the good turns out to be in its specifics, liberty of conscience plays an essential and basic role in its formation. Individuals cannot form their own conceptions of the good if they are not free to believe what they will but are, instead, assigned both beliefs and conceptions of the good by some external source. Because of this basic role that liberty of conscience plays, one of its

⁸⁰Ibid., p. 52.

inherent features lays in its *universality*—it applies to *all* individuals capable of forming their own conceptions of the good.

The universality of liberty of conscience depends in part on the formal characteristic of *agnosticity*. The import of liberty of conscience does not stem in a derivative manner from the content of the conception of the good itself; it functions, instead, as a formal feature presupposed by the entire process of deliberation. In other words, liberty of conscience is valuable insofar as it allows individuals to form their conceptions of the good, regardless of how those conceptions may place higher esteem on one sort of lifestyle over another. It is agnostic among lifestyles.

Do these formal features extend to the other basic liberties? Enshrining the basic rights within the privileged protection of the first principle ensures, at least formally, that those rights and liberties are to be guaranteed to all individuals regardless of gender, race, or ethnicity. Not all of the basic rights and liberties, however, can be said to be agnostic in the way described above. The political liberties, the “liberty of the ancients,” place greater value on a life modeled on civic and political participation, which explains why Rawls justifies their status, not on grounds based in the capacity to form a conception of the good but rather, in their connection to an individual’s effective sense of justice. Freedom of religious belief, on the other hand, protects beliefs of a very specific kind and is not fully agnostic among lifestyles. Rawls admits, and this is very important for my purposes here, that many of the basic liberties may not be valued equally by all citizens.⁸¹ The subjective valuation of different rights and liberties carries important implications for their modal connection to the moral powers. The fact that not all basic rights are equally valuable for all citizens suggests that not all of the liberties will turn out to be necessary for the development and exercise of the two moral powers for *all* individuals; the important point, rather, is that they need be necessary only for *some* individuals to develop their

⁸¹Rawls, “The Basic Liberties and Their Priority,” pp. 12-13.

moral powers. This implication weakens considerably the conditions that a freedom must satisfy to qualify as a basic right.

While the discussion here is admittedly far from exhaustive, the fact that freedom of religious belief is neither universally valued nor agonistic among lifestyles makes it difficult to point to some principled distinction between the civil and political liberties compared to the economic liberties. In fact, as we will see later on, freedom of religious belief possesses some affinities with the economic liberties as both are more explicitly connected to a particular *range* of determinate conceptions of the good.

The second argument is rooted in a recognition of our (in)capacities of predicting and harnessing market forces for our desired ends. Not only is the market economy host to a number of complexities absent from those found within social and political institutions, it also has the capacity, as has been prominently observed by many different thinkers, to influence activity within the social and political domains of life. If left to its own devices and mechanisms the market would, Rawls thinks, converge towards patterns of distribution determined by morally arbitrary instances of luck (differences in natural endowments and social circumstances) and those that further concentrate accumulations of wealth and property in ways that obstruct the operation of the market's competitive framework as well as the other components of justice as fairness. Rawls thus advocates for more state regulation and interference in economic matters.⁸²

More important for our purposes, however, is his claim that the rules governing market activity are not the appropriate topics for discussion at either the original position or the constitutional stage but are rather best left to the legislative and judicial stages. Under this line of thought the structure that the institution of ownership takes is determined by legislators based on

⁸²In *JAF* Rawls writes, as an example, that "A free market system must be set within a framework of political and legal institutions that adjust the long-run trend of economic forces so as to prevent excessive concentrations of property and wealth," p. 44.

how well its intended form fulfills the difference principle.⁸³ Recall that the difference principle justifies social and economic inequalities only if those inequalities work to the advantage of the worst off in society by maximizing their holdings of wealth and income. The form that the institution of ownership is to take depends, in the last word, as to which system of ownership—private or collective control—both increases the incentives attached to important offices and positions within society and maximizes the wealth and income of the worst off.

To determine which form of ownership best satisfies the difference principle legislators would probably need access to empirical data, which is precisely the sort of information locked behind the veil of ignorance in the original position. But Rawls does allow access to the appropriate sort of empirical data needed to make such decisions, namely, knowledge of the existing social circumstances of society, at the constitutional stage.⁸⁴ Yet, he still maintains that the structure of economic institutions is more appropriately decided later at the legislative stage, so his concern cannot be that deliberators lack access to the right sort of information. Rather, his reluctance to include economic rights within the constitutional framework stems, in my opinion, from an epistemic diffidence—from a belief in the uncertainty of our acquired knowledge over economic theory to be able to determine with any high degree of confidence the rules governing market activity, including, but not limited to, how the market is to distribute its goods. This is not to suggest that we should abstain from regulating and interfering with the market, but only that in doing so, we must always remain cognizant of our limitations and therefore keep open viable

⁸³Rex Martin also argues that the structure of economic institutions is constrained by the difference principle, pp. 169-174. I differ from Martin's interpretation insofar as he adopts a "revisionist" interpretation of the difference principle, while I follow the traditional interpretation held by Rawls. For Martin's interpretation of how the difference principle is to be understood, see chapter 5 of his book. For Rawls's position, see *JAF* pp. 57-72.

⁸⁴Rawls, "The Basic Liberties and Their Priority," pp. 7, 51-52.

political avenues for altering the economic system.⁸⁵ As a result, embedding any economic rights within the constitutional framework would make it supremely difficult—because of the nearly insurmountable legislative and judiciary burden involved in amending the constitution as opposed to non-constitutional laws—for the state to alter and revise economic institutions within society, as knowledge of the best means for fulfilling the constraints imposed by difference principle transforms in time. In this regard and only in this regard, Rawls’s position more closely resembles, at least in spirit, the anti-rationalist, skeptical, and therefore cautionary approach to law building advised by classical liberals such as Adam Smith and in particular David Hume. Like these two theorists Rawls adopts a more empiricist and cautionary “wait and see approach” that allows experience rather than rationalistic construction to guide legislators when it comes to determining the rules governing the market economy.

There are several responses to offer against the idea that economic institutions are more appropriately decided at lower levels of abstraction than those typified by the circumstances found in the original position. First, and as a matter of method, consigning all consideration of economic matters, such as the freedoms granted individuals in the economic sphere, begs the question as to the status of the economic liberties by ignoring the priority relation between the two principles. Not only is the first principle supposed to be satisfied before the second principle and fair equality of opportunity before the difference principle, but the difference principle (in the special conception of justice) ranges only over the primary goods not included within the first principle and the fair equality of opportunity principle. The specification of these principles occurs first, and the difference principle arranges inequalities in the *residual* primary goods in order to maximize the benefit of those inequalities for the worst off. To argue, by stipulation, that

⁸⁵He admits that “If economic theory is used incorrectly or if the received doctrine is itself mistaken, I hope that for the purposes of the theory of justice no harm is done,” *TJ*, p. 265.

the difference principle ranges over economic liberties preemptively closes discussion regarding their status as basic rights. For if it turns out that the economic liberties are basic rights (say, by their connection to the development of personhood) and thereby included under the first principle, then they would not be constrained by considerations germane to the difference principle, such as determining a legitimate arrangement of ownership rights based on whether it maximizes the economic holdings of the worst off.

Under this line of argument it is still possible for the structure of the economic institutions partially determined in the original position to remain compatible with the normative constraints motivating the difference principle. Even if many of the capitalist economic liberties turn out to be basic rights in virtue of their connection to personhood, these economic liberties, just as the civil and political liberties, would have to undergo further specification at the constitutional stage. At this stage it would be up to legislators to determine whether all exercises of private ownership (those capacities granted by “full ownership”) are grounded in personhood. Perhaps only entrepreneurial exercises of ownership, and not decisions over bequest, are connected to the two moral powers, and perhaps private ownership turns out not to guarantee one-hundred percent of returns on profit. Rawls’s favored institutional regime, property-owning democracy, allows private ownership over the means of production, but the government specifies property rights in such a way that diffuses ownership throughout the population. The important point here is that recognizing ownership rights in the original position restricts to some degree the range of permissible economic systems, but it does not therefore determine all features of the economic system or even a specific distribution of goods.⁸⁶ In this sense the status of ownership rights as basic rights is not tied to what may be a historically transient economic system.

Elevating ownership rights to basic rights in the original position still leaves legislators with the

⁸⁶Rawls, *TJ*, pp. 270-274.

responsibility of refining those rights, and determining in the end, whether a regime of welfare-state capitalism or property-owning democracy best satisfies the difference principle.⁸⁷

It would be helpful, in summation, to collect the various strands of argumentation running through the section. Rawls never offers any explicit argument of his own for excluding the economic liberties from the first principle and adopts, instead, a different criterion altogether for justifying their status as non-basic rights. The section thus canvassed and rejected two interpretive arguments offered on Rawls's behalf. The first argument, which proved unsuccessful, depended on identifying some set of properties shared by the civil and political liberties absent at the same time in the economic liberties that would justify treating the latter differently within the theory. The second argument stemmed from a worry over our lack of mastery in predicting the effects of economic theory and advocated, in turn, a cautionary approach to the determination and implementation of economic policy. It was argued in response that recognition of ownership rights in the original position need not determine in concrete detail all features of the economic system. With the conceptual ground now cleared of obstacles, in the next section I provide an argument beginning from Rawls's own premises intended to show that the parties in the original position have good reason for elevating many of the capitalist economic liberties to basic rights.

⁸⁷ Jason Brennan argues that the best way to fulfill the difference principle is indirectly, that is, by adopting a pro-growth capitalist regime that does not intentionally attempt to satisfy the difference principle. See his paper "Rawls' Paradox," *Constitutional Political Economy*. 18 (2007): 287-299. If this is correct, then I would think this conclusion goes some way in establishing the compatibility between elevating the capitalist economic liberties to basic rights and the difference principle. However, as was pointed out by the first response, the status of the capitalist economic liberties does not depend on whether or not they are compatible with the difference principle. If it turns out that the conception of personhood requires elevating the capitalist economic liberties to first-principle status and doing so is not compatible with the difference principle, then that would, I think, expose a deeper and more problematic tension within justice as fairness as a whole.

2.3 Capitalist Economic Liberties as Basic Liberties

For the capitalist economic liberties to qualify as basic liberties parties in the original position, motivated by their highest-order interests, would have to view them as part of the conditions necessary for the development and exercise of their two moral powers. It was mentioned earlier in the paper that the capacity to form and pursue a conception of the good operates instrumentally and constitutes an ingredient of the individual's determinate conception of the good. Its ability to perform both of these functions depends on how well the individual applies and coheres with the principles of deliberative rationality that "guide its [the moral power's] operation."⁸⁸ The exercise of deliberative rationality—an idea Rawls borrows from Henry Sidgwick—encompasses a process of critical reflection antecedent to and necessary for choosing a life plan that generates in turn both a sense of responsibility and ownership over the plan selected by the individual.⁸⁹

As a consequence, the rational autonomy of the parties in the original position, which exhausts the content of their motivations, incorporates as part of their highest-order interests those conditions necessary for the exercise of deliberative rationality. For without the exercise of deliberative rationality the parties would fail to develop and exercise the moral power in such a way that satisfies its role as a constitutive ingredient within their life plans. It is only through the critical reflection afforded by deliberative rationality that Rawls thinks individuals will come to take ownership and responsibility over their life plans.

In fact, the connection between the moral power and deliberative rationality, in which the development and exercise of the former depends on the exercise of the latter, becomes even tighter as Rawls proceeds in *A Theory of Justice* to define an individual's good in terms of

⁸⁸Rawls, "The Basic Liberties and Their Priority," pp. 27, 29, 47.

⁸⁹Rawls, *TJ*, p. 417.

rationality. A particular object *X* is good if and only if it has both the properties it is rational to want in *X* and it is rational for an individual to want *X* given the individual's circumstances, abilities, and plan of life.⁹⁰ The second conjunct is important here because the individual's life plan is responsible for establishing the standard of value: "It [a rational life plan] is fundamental for the definition of the good, since a rational plan of life establishes the basic point of view from which all judgments of value relating to a particular person are to be made and finally rendered consistent."⁹¹ Of even more importance is that Rawls proceeds to extend and apply this definition of the good to the very decision to adopt a particular life plan itself: the thin theory of the good describes the good in terms of which life plan it is rational for the individual to adopt as determined by the process of deliberative rationality. Thus, the exercise of deliberative rationality is not only necessary for the moral power to play its constitutive role, but it is also necessary for the moral power to play its instrumental role. Deliberative rationality is necessary if individuals are to form, at least in a rational and autonomous manner, their conceptions of the good.⁹²

There are several additional constraints that work in harmony with deliberative rationality to determine the rationality of a life plan. One such formal constraint includes what Rawls calls "counting principles." These are largely formal principles of rational choice, such as the principle of inclusiveness, which states that if two alternatives both satisfy the same ends, it is rational to choose the alternative that satisfies a larger set of ends. The other, more substantive

⁹⁰Rawls, *TJ*, p. 399.

⁹¹*Ibid.*, p. 409.

⁹²One may object that Rawls abandons any substantive or moral notion of autonomy in his transition to political liberalism. This is a complex and contentious issue. I can only mention here that in a footnote in *Political Liberalism*, Rawls mentions that while he would change the *presentation* of goodness as rationality, "nearly all of the structure and substantive content of justice as fairness (including goodness as rationality) goes over unchanged into that conception as a political one..." *PL*, p. 177, fn. 3. For a fuller discussion on this issue see the insightful paper by Ruth Abbey & Jeff Spinner-Haley, "Rawls, Mill, and the Puzzle of Political Liberalism." *The Journal of Politics* 75.1 (2013): 124-136.

constraint emphasizes the role that the Aristotelian Principle plays within Rawls's political theory—an idea that has acquired a somewhat nebulous position within his general liberal framework.⁹³

According to Rawls, the Aristotelian Principle (AP) expresses a deep psychological fact about human nature. That is, human beings prefer to engage in more complex activities that test their sophisticated cognitive capacities and their meticulously trained abilities. Thus, according to the principle, an individual would prefer to play chess over checkers because the former game is more complex insofar as it provides more robust and complicated decision-making opportunities and requires more finely refined skills and abilities than does checkers. In describing the principle as a “deep psychological fact” Rawls introduces the AP as a descriptive fact about the nature of human beings—one that is, admittedly, capable of being overridden. As a psychological and empirical fact the principle is certainly open to dispute; it may turn out in light of empirical research that people do not prefer more complex activities to simpler ones, and Rawls may, after all, simply be mistaken on this account. At other times, however, he appears to imbue the principle with certain evaluative features and in doing so describes the principle as forming part of the background that regulates judgments of value.⁹⁴

These two aspects of the principle work in tandem to explain its role within justice as fairness. First, accepting the AP as a natural fact of human psychology leads Rawls to impose the principle as a constraint over the rationality of a life plan: “A rational plan—constrained as always by the principles of right—allows a person to flourish so far as circumstances permit, and

⁹³In a recent paper Steven Wall argues along somewhat similar lines as those emphasized here but does so in order to show that the Aristotelian Principle paves the way for perfectionist state policies within justice as fairness. See “Rawlsian Perfectionism,” *Journal of Moral Philosophy*. 10 (2013): 573-597.

⁹⁴Rawls, *TJ*, p. 432.

to exercise his realized abilities as much as he can.”⁹⁵ It would be irrational for individuals to construct and pursue life plans that were in tension with deeply rooted features of human psychology. Furthermore, the evaluative component allows individuals to evaluate and rank life plans based on how well each manages to incorporate activities that align with the AP.⁹⁶ As a result, Rawls declares that the AP comprises part of the motivational framework, and therefore the rational autonomy, of parties in the original position.⁹⁷ Now one might wonder whether the veil of ignorance prevents the parties from recognizing the influence catered over their desires by the principle, but the veil does allow the parties knowledge of laws of human psychology and the “deep psychological fact” manifested by the AP would be one such law recognized by the parties in the original position. In sum then, developing and exercising the moral power to form and pursue a conception of the good requires that the parties critically evaluate the options before them (deliberative rationality) in light of motivations tailored under the influence of the Aristotelian Principle.

Before proceeding any further, it may be appropriate to consider one potential objection against the position offered here. Rawls himself presents one counter example designed to show, by his own admission, that a rational life plan may not satisfy the AP after all. In the counter example that he provides there is an individual who happens to solve difficult mathematical problems for a living and who finds her only pleasure in counting blades of grass. According to Rawls, we would be forced to admit, congruent with a purely subjectivist conception of the good,

⁹⁵Ibid., p. 429. He also writes, “Plans must fit the requirements of human capacities and abilities, their trends of maturation and growth, and how they are best trained and educated for this purpose,” p. 424.

⁹⁶Wall offers a plausible interpretation of Rawls as connecting the AP with the rationality of life plans primarily through the good of self-respect, rather than directly, as I do here. A rational life plan, according to Wall’s interpretation of Rawls, is one that promotes self-respect, and a life plan that incorporates the AP is one that promotes self-respect, pp. 581-587. While Wall does not present his interpretation as one that Rawls would explicitly endorse, I do think it is borne out by the text and is not in conflict with my position. Furthermore, in “The Basic Liberties and Their Priority,” p. 33, Rawls states that the development of self-respect presupposes the development and exercise of the two moral powers, which would fit with the argument presented here.

⁹⁷Rawls, *TJ*, p. 424.

that the good for this individual consists in counting blades of grass. There are two responses to be made here as it's not clear that this counter example accomplishes what Rawls believes it to accomplish. First, like liberty of conscience, the AP is agnostic among life styles. It does not require that an individual's life plan satisfy the principle by including any specific activities, nor does it require that an individual maximally incorporate the principle within all aspects of her life. Given that the individual in the counter example solves difficult mathematical problems for a living, it's not clear as to why this fact would fail to satisfy the AP. With everything that Rawls has said about the principle, he owes some explanation for why the individual's profession fails, in this case, to satisfy the AP. Second, Rawls suggests that there may be some peculiarity that makes it rational for the individual to count blades of grass, and *with no way to alter her condition*, then we would have to accept such a conception of the good.⁹⁸ In other words, the counter example fails to show that it would be rational for a normal adult human being—that is, one without any neurotic peculiarity and whose condition is more amenable to therapy—to adopt a life plan centered on counting blades of grass. In this case what the “circumstances permit” have the effect of limiting the scope of rational life plans open to the individual so that a life constituted of solving difficult mathematical problems and counting blades of grass turns out to be quite rational.

To continue with the argument, then, for many people entrepreneurial freedoms, such as those associated with ownership over productive resources and starting and running a business, can serve as viable paths for incorporating the AP within a life plan. There is a rich tradition, mostly within Austrian economics, that has vaunted both entrepreneurial freedoms and the risks associated with the exercise of those freedoms. The exercise of entrepreneurial freedoms are

⁹⁸Several others have emphasized this point as well. See the book by Samuel Freeman, *Rawls*. New York: Routledge, 2007, p. 271; & Wall, pp. 581-582.

often laced with risks because they often come alongside the pursuit of innovative and creative ideas that stem from visionary insight and a desire to push the boundaries of technology to unprecedented levels. Furthermore, entrepreneurial activity has been described by some as an activity essentially concerned with discerning opportunities for value or profit-making in the market.⁹⁹ The entrepreneur possesses the foresight, ingenuity, and courage to allocate and risk resources on innovations with tremendous upside that are as of yet untapped or unrecognized and would remain so if it were not for the entrepreneur. Furthermore, the independence and responsibility involved in running a (small) business requires the ability to juggle and balance a number of diverse and often unrelated responsibilities such as decisions regarding the allocation of productive resources, employee management, customer service, the work in a specific field itself, or the research and development of a new idea and technology, which can serve as challenging opportunities to incorporate the AP within an individual's life plan. For many individuals entrepreneurial activity becomes the most conspicuous feature of their lives.

Unlike many of our own political predecessors, the parties in the original position who are deprived of any specific information regarding their determinate conceptions of the good would have no reason to prejudice evaluation in favor of a particular set of liberties—whether they are the liberties of the ancients, the moderns, or, the economic liberties. Indeed, it would be quite irrational. Characterized only by their rational autonomy, and motivated, therefore, to establish a list of basic rights designed to promote their moral power to form and pursue a conception of the good, recognition that the capitalist entrepreneurial freedoms offer a viable, and in some cases necessary, option for the specification of a rational life plan would make it rational to include such liberties under the special protection provided by the first principle.

⁹⁹Krizner, Israel. "Entrepreneurship, Entitlement, and Economic Justice," in *Reading Nozick: Essays on Anarchy, State, and Utopia*. Ed. by Jeffrey Paul. New Jersey: Rowman and Littlefield, 1981.

Without this privileged protection for the capitalist entrepreneurial freedoms, those individuals whose life plans center on such activities will be *unable* to engage in the process of deliberative rationality necessary for developing and exercising their moral power to form a rational life plan.

Now, an interlocutor unsympathetic to the argument may object that this last claim overstates the point. Surely these individuals are still able to exercise their deliberative rationality and to exercise their moral power in forming a rational life plan; what they are unable to do is to exercise their deliberative rationality only when it comes to forming a life plan focused on entrepreneurial activity. But insofar as deliberative rationality refers to a process of critical reflection then individuals are still able to engage in that process.

In response consider the analogy with freedom of religious belief. Without freedom of religious belief, individuals are still able to engage in the process of deliberative rationality and to determine a rational life plan outside of that area. The minimalist interpretation of deliberative rationality implicit in the objection would license severe restrictions on the scope of liberty of conscience, as it would be possible to engage in deliberative rationality, in a way compatible with the objection, as long as the set of permissible life plans open to individuals numbered more than one. This is because liberty of conscience is best understood conceptually as a matter of degree: it represents a set that includes as members the total number of beliefs open to individuals in forming their life plans. The degree of liberty of conscience open to individuals within a society depends on the number of ways in which those individuals are allowed to form their life plans, where the smaller the set, the less liberty of conscience individuals can be described as having. Similarly, protecting *only* a smaller set of beliefs within the total set, such as freedom of religious belief or entrepreneurial activity exclusively, entails only a minimal degree of liberty of conscience and does not necessarily maximize the total number of beliefs open to

individuals. It is much more than a symbolic gesture that leads Rawls to mention freedom of religious belief explicitly as one set of beliefs protected by liberty of conscience.

Individuals in the original position will seek rationally to maximize the scope of liberty of conscience. Ignorant of their preferences and their determinate conceptions of the good, some individuals may find, once the veil has been lifted, a desire for entrepreneurship or by analogy a religious mode of life, and without any protection for these beliefs and values, individuals will be unable to exercise their deliberative rationality in forming and pursuing life plans centered on these activities. Furthermore, this inability to exercise their deliberative rationality will also deprive them from taking ownership over their life plans. Just as some religious societies remain intolerant of individuals practicing “heretical” religions, in some societies with a particular economic structure, such as a society where the means of production are centrally owned, then individuals would similarly be prohibited from exercising their deliberative rationality to form a life plan based on entrepreneurship. Rawls’s own maximin principle of choice dictates that the rational decision to make in the original position is to maximize the scope of liberty of conscience; individuals may otherwise find themselves in intellectually and morally hostile environments without the right to form and select a rational life plan.

As in the case with freedom of religious belief it will likely turn out for many individuals that the capitalist entrepreneurial freedoms will carry little, if any, importance within their lives. As we saw in section two, Rawls denies that all of the basic rights must be equally valuable for all citizens so that a single basic right must be necessary for all citizens to develop their moral powers; for a particular right to earn that privilege it must be necessary for some citizens to develop and exercise their moral powers, which further requires the exercise of their deliberative rationality. If it is necessary for some individuals to exercise their deliberative rationality and to

determine thereby what is rational for them by having either freedom of religious belief or entrepreneurial freedom, then the parties would choose to include these freedoms within the list of basic rights. A failure to include these freedoms would, as Rawls suggests, demonstrate a failure—on the part of the parties in the original position—to treat with a sufficient degree of importance the value that such freedoms may have in an individual's life. Admittedly, while *we* may have our own biased reasons for favoring certain freedoms and lifestyles over others, the parties in the original position have every reason not to exclude those freedoms that provide viable and, in some cases, necessary alternatives for the development and exercise of their moral powers. Only such a characterization of the parties in the original position and such a specification of the first principle demonstrate, in the end, a commitment towards the value pluralism both a hallmark of democratic tradition and Rawls's political theory.

2.4 Conclusion

By way of concluding the chapter it may prove helpful to address one objection. One may object that the argument presented here would establish a claim for nearly every freedom, even those that may have appeared as plainly trivial before, to qualify as a basic right protected by the first principle. However, most, if not all of the different freedoms that we could imagine, would either already be protected by the list of basic rights or they would be excluded, rightfully, from the list for other relevant reasons. This is so because the connection between personhood and a particular liberty is elucidated ultimately within the framework provided by Rawls's political theory, so that any purported connection between the two must remain consistent with the premises offered therein. To argue that my freedom to become a master criminal or master chess player should be a basic right would fail to accord with the relevant premises because (1) in many cases such freedoms would not promote either the AP or the parties' sense of self-respect;

(2) liberty of conscience already protects those freedoms making the need to further specify them redundant; and lastly, (3) they are not compatible with an effective sense of justice because they violate the rights of others as specified by the principles of justice.

The second reason is the most important when it comes to determining the status of those freedoms similar to the freedom to become a master chess player. In these cases liberty of conscience already protects citizens' ability to exercise their deliberative rationality in the formation and selection of such life plans once the veil has been lifted. This obviates the need to enumerate nearly every possible life plan open to individuals on the list of basic rights.

On the other hand, if liberty of conscience is a matter of degree, why is it fair to assume that these other freedoms are implicit within its protection while the freedom of religious belief and entrepreneurial activity warrant explicit mention? One reason is that the latter two sets of freedoms have been the subject of longstanding historical dispute.¹⁰⁰ And in the case of the entrepreneurial freedoms, there is more pressure to interfere than with the freedom to form a life plan around chess playing. For these reasons the absence of the capitalist entrepreneurial freedoms from Rawls's list of basic rights reflects a calculated move that leaves these freedoms in a perilous position susceptible to state intrusion in ways unlike those freedoms pressed by the objection that are not explicitly mentioned.

Insofar as the argument presented here proceeds within the parameters established by Rawls's theory, the conclusion becomes all the more problematic for the determinative function that conceptions of persons are meant to perform within liberalism. Instead of delineating a scheme of basic rights and a (set of) resultant institutional regime(s), it is possible to appeal to the very same conception of persons to derive an alternative and conflicting scheme of basic

¹⁰⁰ I am not sure whether sexual freedom would best be placed here for this reason or to include it as part of a right to individual privacy.

rights and an entirely disparate set of social, political, and economic institutional arrangements. It is true that the sequential structure of Rawls's theory grants it some elasticity to preserve, in theory, the possibility for deriving some of the institutional programs that he preferred. To this extent, it becomes an open and a very serious question within Rawlsian scholarship, in light of the argument presented here, whether elevating the capitalist entrepreneurial freedoms to basic rights is compatible with the salient features of the institutional regimes preferred by Rawls, such as property-owning democracy. However this latter issue is settled, I have argued that his constructivist method requires, at a deeper and more fundamental level, enshrining the capitalist entrepreneurial freedoms under the first principle of justice. If it turns out that doing so produces incompatibilities, then so much the worse for justice as fairness in particular and constructivism in general. While I have focused only on the high liberal tradition as typified by John Rawls and the status of the capitalist economic liberties, writers from other liberal traditions who argue for antithetical positions concerning the status of the economic liberties by way of constructivist means face, nonetheless, similar difficulties. In the next chapter I take up this issue in regards to John Tomasi's conception of persons as self-authors.

3 The Pitfalls of Economic Freedom for Self-Authorship

Tomasi claims that his ideal of personhood, which he labels as “self-authorship,” requires elevating the capitalist economic liberties to the status of basic rights. In this chapter I analyze his ideal of self-authorship and argue that elevating the capitalist economic liberties to basic rights would stymie the development and exercise of self-authorship for the vast majority of the population. The first section collects Tomasi’s various remarks to explain the two aspects central to self-authorship: the expansion of decision-making opportunities in the economic sphere and causal agency. The second section argues that elevating the capitalist economic liberties to basic rights limits the ability for those who lack ownership over the means of production to make many economic choices. The third section argues that market democracy’s favoritism toward a market distribution of goods—in lieu of enshrining the economic liberties among the other basic rights—coupled with the absence of any constraints designed to limit the degree of economic inequality produces circumstances that impair individuals’ ability to develop and exercise their causal agency in meaningful ways.

3.1 Self-Authorship

In the initial presentation of self-authorship John Tomasi’s ideal of personhood shares an ostensible similarity to the ideal found within the political theories of high liberal philosophers like Mill and Rawls. Tomasi’s introduction of self-authorship includes as part of the ideal the very same capacity as outlined formally by Mill and Rawls in their version—that is, the capacity to “develop and act on a life plan.”¹⁰¹ Yet, it becomes clear very quickly that Tomasi derives radically different conclusions despite beginning from what appears to be a similar point. The purpose of this section is to explore in greater depth Tomasi’s notion of self-authorship in order to better understand its dissimilarities with the high liberal version, its role in determining the

¹⁰¹Tomasi, p. 40.

status of the capitalist economic liberties, and its role in organizing society's economic institutions according to a more politically conservative orientation that emphasizes the role of markets and reduces, in turn, the scope of government programs and the influence of state authority in economic affairs.

Immediately following his introduction of self-authorship in *Free Market Fairness*, Tomasi proceeds to emphasize the dual capacities—both developing *and* pursuing a life-plan—engrained in the ideal. He does so by restating the ideal of self-authorship in terms of agency, where “People are life agents and their agency matters.”¹⁰² In contrast to the high liberal version, Tomasi's notion of self-authorship emphasizes more explicitly these two forms of agency (and therefore the two components—cognitive and physical—of autonomy outlined in the first chapter). His understanding of agency often transitions—in ways not always evident to the reader—between agency in developing a life plan (the cognitive component) as expressed through individual choice, particularly choice in the economic sphere, and agency as manifested in the pursuit of a life plan (the physical component) in the sense of acting on, by attempting to actualize, one's choices and decisions. It is important, however, not to lose sight of the conceptual differences between these two forms or components of agency. As we will see, Tomasi often appeals to the first form to ground one economic liberty and to the second form to ground another economic liberty. Furthermore, I hope to show in the second and third sections that an appropriate sensitivity to the different forms of agency embedded within his ideal of self-authorship carry implications at odds with his espousal of the capitalist economic liberties that engender market-dependent institutions and distributions of goods.

The first form of agency embedded within self-authorship focuses on an individual's capacity to develop a life-plan. Tomasi describes part of this capacity as “The capacity to

¹⁰²Tomasi, p. 40.

realistically assess the options before them [the individuals], and in light of that assessment, to set standards for a life of a sort that each deems worth living.”¹⁰³ In contrast with Mill and Rawls, a noteworthy feature of Tomasi’s ideal of self-authorship is the absence of the dimensions typically associated with the exercise of the cognitive component of autonomy, such as procedural independence. The first form of agency does not require that the antecedent process of reflection in the adoption of a life plan be free from either undue internal or external influences that may affect the decision. Whereas Mill stresses greatly the need to enervate, if not extirpate altogether, the pressures exerted by external modes of social conformity in choosing a life plan, Tomasi centers his attention on the rationality of adopting a life plan ill-suited to the individual’s internal endowments and external circumstances. He insists that an individual “realistically assess” the options available in light of the individual’s capacities and talents, and the limitations exerted by the individual’s socioeconomic circumstances. In this way both the exercise of this form of agency and in turn the rationality of a life plan from an individual’s perspective take for granted the prevalent conditions that form the status quo—conditions of economic inequality as one example—that must confront individuals in their choice over a life plan.

The “realistic assessment” of life plans does not incorporate the stricter demands of procedural independence—the process of critical reflection prior to choice—found in Mill’s version of the capacity, nor does it give any consideration to the substantive content of the decisions made by individuals. What is important for liberals like Mill and Rawls is not only that individuals engage in a process of critical reflection but that individuals make decisions

¹⁰³Tomasi, p. 40.

appropriately suited to their nature as beings with sophisticated cognitive faculties.¹⁰⁴ While Tomasi implies that the adoption of any life plan ill-suited to the individual's own talents and capacities would be irrational, he does not draw the connection tighter by defining the individual's good in terms of rationality, as does Rawls. Because Tomasi does not identify the individual's good in terms of rationality, as we will see later on, it becomes unclear what sort of normative role this capacity plays. Furthermore, the rationality of a life plan does not depend on incorporating activities that develop particular faculties. So while his account of the cognitive component embedded in his ideal of self-authorship—the capacity to develop a life-plan—incorporates to some degree a capacity to engage in a process of critical reflection through the realistic assessment of life plans, it does not go so far as to prescribe the (arguably objectionable) features within the ideals of persons located in the political theories of Mill and Rawls.

Also important for the exercise of self-authorship in terms of developing a life plan is the expansion of what Tomasi calls “evaluative horizons.” In grounding the basic liberties in self-authorship Tomasi states that “The basic liberties are those liberties that must be protected if citizens are to develop their *evaluative horizons*, thus making them capable of truly governing themselves (emphasis mine).¹⁰⁵ Here Tomasi connects the basic liberties to self-authorship in terms related to making various choices and forming life plans. His defense of the political liberties, for example, stems from the stunting of the “evaluative capacities” of individuals.¹⁰⁶ The same sort of defense extends to the economic sphere and the economic liberties: the failure to elevate the capitalist economic liberties to basic rights allows the government to interfere with the capacity for citizens' to make independent decisions in economic areas. Private ownership of

¹⁰⁴In *The Modern Liberal Theory of Man* Gerald Gaus argues that modern liberals—including Mill and Rawls—are committed to a nature of the human being that pivots around the development of their higher faculties, pp. 13-45. New York: St. Martin's Press, 1983. The argument provided in the second chapter corroborates this view.

¹⁰⁵Tomasi, p.75.

¹⁰⁶Tomasi, p. 75.

productive property, for example, protects individuals against these authoritative intrusions on the part of the state: “People who have ownership stakes in productive property are by that very fact able to stand on their own feet and *make important life choices* (emphasis mine).”¹⁰⁷ Again in relation to ownership of productive property Tomasi says, “Societies that protect the private ownership of productive property as a basic right *increase the range of projects*...that are available to citizens. Such societies *broaden the evaluative horizons* of citizens (emphasis mine).”¹⁰⁸ In the context of negotiating working conditions (the choice of profession, location, number of hours, and terms of work) Tomasi says, “A society that denied individuals the right to make decisions regarding those aspects of their working experience would *truncate* the ability of those people to be responsible authors of their own lives (emphasis mine).”¹⁰⁹ In a later chapter Tomasi writes that “Responsible self-authors must be free to make a *wide range of decisions* in the economic domain of their lives (emphasis mine).”¹¹⁰ And lastly, he says, “Honoring the capacity of one’s fellow citizens to be self-authors requires that one respects fellow citizens’ capacity to *make choices of their own* regarding economic matters.”¹¹¹ This aspect of self-authorship—the expansion of “evaluative horizons”—presents an ideal best understood in terms of the *maximization* of opportunities for the exercise of individual choice. Tomasi’s argument for elevating the capitalist economic liberties stems from an individual’s ability to make a maximal number of choices in the economic sphere of life without paternalistic governmental interference.

It does not follow from this feature of self-authorship (the maximization of individual choice) that all interferences with freedom must be prohibited. Some forms of political coercion

¹⁰⁷Tomasi, p. 78.

¹⁰⁸Tomasi, p. 79.

¹⁰⁹Tomasi, p. 78.

¹¹⁰Tomasi, p. 97.

¹¹¹Tomasi, p. 98.

that truncate an individual's self-authorship may still be legitimate. For example, laws that limit an individual's ability to pursue a life plan intended to physically harm others are not illegitimate suppressions of freedom and self-authorship. To differentiate between legitimate and illegitimate suppressions of self-authorship, Tomasi's argument depends in part on the plausible claim that choices in the economic sphere are morally significant in ways that not all choices are.¹¹² From this it follows that interference with citizens' ability to make economic choices inhibits the development of their self-authorship illegitimately. Just as civil and political liberties protect the exercise of important choices—the choice of what to believe and who to vote for—economic choices also reflect important values that reflect our characters and personalities and deserve, for that reason, privileged status along with civil and political liberties. The janitor who decides to save for his daughter's college education instead of a family vacation expresses values important to him. Economic decisions “require that people assess their most basic values and, in light of that assessment, set themselves on a course of life that is their own.”¹¹³ “Questions about long-term financial planning,” as those that confront the janitor, “require that people think seriously about the relation between the person that each is at that moment to the person one will become many years in the future.”¹¹⁴ High liberals often exclude many of the economic liberties from the list of basic rights because they tend to disparage or ignore entirely the significance of economic activity in our daily lives.¹¹⁵ Tomasi's ideal of self-authorship, in direct contrast to the high

¹¹²The other part of this distinction relies on the second capacity of responsible self-authorship—recognizing others as responsible self-authors who have the capacity and freedom to develop and act on their own life plans.

¹¹³Tomasi, p. 80.

¹¹⁴Tomasi, p. 80.

¹¹⁵Tomasi, p. 67. Gaus also makes this point: disparaging the economic side of life leads to viewing the economic liberties as less essential, as liberties that “can be infringed without really interfering with a person's good,” pp. 238-239.

liberal perspective, recognizes the intrinsic importance of economic activity and thus seeks to protect such activity by elevating the economic liberties to the status of basic rights.¹¹⁶

Tomasi's ideal of self-authorship does not simply amount to the sum of choices that individuals make in designing their life plans and in other areas of their lives, as at other times he emphasizes not merely the significance of choosing but of further actualizing those choices into concrete actions—he emphasizes rather the *pursuit* or *carrying out* of life-plans. In contrasting the different points of focus between market democracy and social democratic theories as advocated by Rawls, Tomasi asserts that market democracy is designed to foster the ability for individuals to be and to see themselves as the central cause of the lives they lead.¹¹⁷ In this manner individuals are self-authors to the degree or extent that they are the cause of the circumstances of their lives. For this purpose Tomasi borrows Amartya Sen's "comprehensive approach" for the evaluation of outcomes.¹¹⁸ One manner of evaluating outcomes is to focus exclusively on whether the desired outcome is achieved, regardless of the process that helped produce the outcome. On Sen's comprehensive approach, however, one can evaluate a particular outcome not only by the end result, but in addition to the outcome itself, the processes and agencies involved in producing that outcome. The implication of this line of approach for Tomasi is that many state programs, although designed with the beneficent intention of improving the circumstances of the citizens, actually obviate their exercise of self-authorship by diminishing their causal agency. Redistributive programs implemented by the state serve as the primary causal explanation for an individual's level of wealth instead of the individual's own responsibility, toil, and effort. In countenance of this claim Tomasi appeals to certain feminist

¹¹⁶Tomasi's argument for expanding choice into the economic sphere differs from typical liberal arguments offered for expanding choice on the basis of the developmental benefits facilitated by the process of making choices. For a review of this latter argument in the liberal tradition, see Gaus, pp. 170-171.

¹¹⁷Tomasi, p. 184.

¹¹⁸Tomasi, p. 183.

thinkers who argue that simply improving the material conditions of women often has the consequence of depriving those same women of other non-physical goods.¹¹⁹ What is important is not only that individuals have reached a certain level of well-being or achievement but that they have done so primarily by and through their own efforts. Women who have their material needs provided for by others lack self-respect when compared to women who recognize the pivotal and primary role their agency played in satisfying those needs. Their material well-being is checkered by the absence of the belief that they were the cause for the way things have turned out. The absence of this belief deals a large blow to their self-respect insofar as “self-respect comes primarily from seeing oneself as the central cause of the particular life one is living.”¹²⁰ The pursuit of any outcome that entails diminution in an individual’s causal agency thereby tarnishes that individual’s self-respect and self-authorship.

In sum then, embedded within Tomasi’s ideal of self-authorship is a commitment to two forms of agency: the agency involved in forming and developing a life plan and the agency involved in acting on or in attempting to actualize a life plan. The first form of agency differs from the high liberal version of this capacity in virtue of the absence of constraints such as procedural independence or developmental restrictions over choices. Rather, a key feature of this form of agency is the maximization of decision-making opportunities facing individuals, particularly in the economic domain of life. The second form of agency concerns the primary causal explanation attributed to a state of affairs. The agency involved in this facet of self-authorship requires that individuals and their actions serve as the primary causal explanation for producing the state of affairs that comprise their lives. According to Tomasi, a failure to elevate the capitalist economic liberties to the list of basic rights impairs the development and exercise

¹¹⁹Tomasi, p. 83.

¹²⁰Tomasi, p. 193.

of both of these facets of self-authorship. Without this protection for the capitalist economic liberties, the “evaluative horizons” individuals face will be more limited, and there is a greater likelihood for the state to play a larger causal role than individuals in bringing about the circumstances of their own lives. The following two sections provide two separate arguments meant to show that elevating the status of the economic liberties produces complications for each form of agency part of Tomasi’s ideal of self-authorship.

3.2 Capitalism, Economic Liberties, and the Exercise of Choice

3.2.1 Capitalist Relations of Production and Choice in the Workplace

As we have seen, one aspect of Tomasi’s ideal of self-authorship emphasizes the significance of choice in the economic sphere. He believes that elevating the capitalist economic liberties to the status of basic rights expands the “evaluative horizons” of citizens and protects their ability to exert greater control over their lives by providing more freedom to make important life decisions in economic and financial matters. But the forces inherent within capitalism and the nature of many of the capitalist economic liberties produce conditions with an inevitable certainty that make it difficult to maximize the exercise of the economic liberties, and in turn the number of significant choices in the economic sphere, for many citizens. A more accurate description of the circumstances shows that any meaningful exercise of the capitalistic economic liberties, or in many cases their exercise at all, is made possible only for a small group of citizens, and the consequence is that the self-authorship of citizens outside of this group comes to be truncated for the sake of those within the privileged group.

The emergence and development of the capitalist economic system introduced a novel mode of production within society. In a communal mode of production members would contribute their share of the produce to some central authority that would then distribute the

goods. In the subsequent feudal process of production serfs would labor and produce mainly for the lord, who in return, would not only allow serfs some meager proportion of their produce but would also provide military protection and security. An essential feature of the capitalist mode of production is the division of society into one group that enjoys private ownership over the means of production, and in virtue of doing so appropriates the produce of labor, and a second group of which, lacking ownership over the means of production, sells their labor power to a capitalist as a commodity.¹²¹ During the infantile stages of capitalism workers maintained ownership over the instruments of production as well as control over the labor process itself in the putting-out system. In this system merchant capitalists would contract out orders to independent workers who still operated as traditional skilled craftsmen and who maintained complete autonomy over the entire production process, such as determining the schedule of production and the conditions of production. However, as merchant capitalists and independent craftsman began to accumulate greater quantities of productive capital the putting-out system proved less efficient in terms of maximizing profits.

The capitalist's desire to abandon the putting-out system—and the more general desire of divesting the worker from control over the production process—was a rational response to the system of returns as defined and generated by the system of property under the capitalist mode of production. The legal right of private ownership guarantees capitalists, not only exclusive use of the means of production, but also one-hundred percent of the surplus or profit created in the production process. From the perspective of the capitalist, purchasing or hiring the labor power

¹²¹Ann Cudd describes two of the defining features of capitalism as private ownership over the means of production and free wage labor. The third condition is a decentralized open market for the production and consumption of goods. See *Capitalism, For and Against: A Feminist Debate*. New York: Cambridge University Press, 2011, pp. 6-8. E.K. Hunt also includes private ownership over the means of production and the commoditization of free labor power as essential features of capitalism. See *History of Economic Thought: A Critical Perspective*. New York: M. E. Sharpe, Inc., 2002, pp. 4-7. Exactly how these classes initially formed depends on one's perspective of history.

of individuals creates an additional cost of production so that capitalists desire to extract as much labor from workers in order to further maximize their profit (while simultaneously minimizing the costs of doing so). Therefore, to maximize production and to extract as much labor from the hired labor power (a mere potentiality in form), Harry Braverman writes that “control over the labor process must pass into the hands of management, not only in a formal sense but by the control and dictation of each step of the process, including its mode of performance.”¹²² As long as private ownership over the means of production justifies one-hundred percent return of profits to the owner of the means of production, it always remains in the self-interest of capitalists to exert as much control over the labor process as possible. The system of ownership in capitalism contributes to intensifying this pressure from the capitalist’s perspective.¹²³

Control over the production process by the capitalist extends beyond the need to promote efficiency. As long as laborers maintain a claim only to wages and are alienated from the returns of the production process, their interests and, consequently their productivity, remain antithetical to the interests of the capitalists who desire to extract as much labor surplus as possible.¹²⁴ The progress of technology has provided sophisticated mechanisms for recording employee performance and allows employers to identify with ease intentional slowdowns of workflow. As technology expands and management exerts greater control over the production process, workers

¹²²Braverman, Harry. *Labor and Monopoly Capital: The Degradation of Work in the Twentieth Century*. New York: Monthly Review, 1974, p. 100.

¹²³It is not conceptually necessary that the system of property under capitalism be defined in this way. Ownership does not have to include as one constituent a right to all returns that accrue from use. There are independent arguments for and against such a right. Nonetheless, insofar as the system of ownership under capitalism has been construed in these terms, I will continue to speak as if this system of ownership were an endemic feature of capitalism.

¹²⁴The less perfectly competitive markets are and the more firmly entrenched a corporation’s position is within a market, then the problem of controlling and increasing worker productivity worsens when there is no direct connection between a worker’s contribution and a return in wages. It becomes even more tenuous in these cases to speak as if the interests of the two groups are cohesive. Again, as long as ownership over the means of production protects a right to one-hundred percent of profits, an increase in profits does not necessarily lead to an increase in wages.

are deprived of opportunities to exercise autonomy and decision-making responsibilities concerning how the inputs of production are to be employed and how individual tasks are to be performed. Control over the workplace is both a manifestation of and a guarantee that the power to make important economic decisions remains in the hands of a concentrated group within society.

Tomasi's version of market democracy problematically minimizes and caricatures concerns over workplace conditions—including the ability for workers' to make important economic decisions. In contrasting Rawls's social-democratic version of the difference principle, which, according to Tomasi's interpretation, seeks to maximize positions of authority and responsibility in the workplace for the worst off in society, Tomasi's version of the difference principle attempts to improve the condition and self-authorship of the worst off by maximizing their income and wealth. He asks rhetorically whether readers would forego greater wealth for greater political control of their workplaces, and he would not, he makes clear, "accept such sacrifices for the opportunity to have longer and more frequent department meetings."¹²⁵

In an interesting bit of irony, Tomasi proceeds to criticize thinkers like John Keynes and John Stuart Mill as both thinkers treat work and economic life more generally as a mere means, and often as a hindrance, to the fulfillment of other more meaningful endeavors and pursuits. Yet Tomasi's refusal to recognize the significance of workplace conditions for determining the quality and meaning of work actually diminishes its role in individual life and treats it instead as a mere means to an end—as nothing more than a means for increasing the income and wealth of individuals. But work carries less intrinsic meaning when it is monotonous, devoid of challenge,

¹²⁵Tomasi, p. 191. The answer to this question is not as evident as Tomasi would imply. In a 1990 Gallup survey on wealth, significant numbers of individuals were not willing to work twelve to fourteen hours every day to become wealthy if it meant they had to work at a job they hated (72 percent), or to spend little time with their family (82 percent). See Everett Ladd and Karlyn Bowman, *Attitudes Towards Economic Inequality*. Washington: AEI Press, 1998, p. 28.

and performed under conditions that offer few opportunities for the exercise of autonomy and discretion over managerial planning as well as individual tasks. Work becomes instead, a time consuming yet isolated portion of individual life, devoid of the meaning that Tomasi rightfully seeks to embed it with. This is borne out by recent data concerning job satisfaction. Despite rising wages within affluent economies, recent statistical trends actually show a decline in job satisfaction. Rising wages have been offset by increases in work effort—individuals are having to work harder within shorter periods of time—in addition to an overall decrease in worker autonomy over both individual tasks within the workday and over decisions at higher managerial levels meant to organize the business as a whole.¹²⁶

Tomasi insists that elevating the third and fourth categories of economic liberties to the list of basic rights widens the “evaluative horizons” of citizens and thereby increases the effective opportunities for citizens to exercise their self-authorship. These liberties include respectively the freedom to hold, use, and develop property for commercial uses and the freedom to use legitimately acquired resources for consumption and production. Enshrining these freedoms as basic rights effectively prevents the state from interfering with individuals’ choices as to the use and allocation of productive inputs.

However, the structure of the capitalist relations of production—where employees labor for the purpose of further accumulating wealth for the sake of the owner, who is entitled to one-hundred percent of the profits in virtue of ownership over the means of production—functions to further divest employees of decision-making responsibilities that accompany ownership of productive properties. The tensions of interest inherent within the capitalist relations of

¹²⁶For the relevant statistical information see *Demanding Work: The Paradox of Job Quality in the Affluent Economy* by Francis Green. New Jersey: Princeton University Press, 2006. For data and explanation for recent trends in work effort, see chapter 3 and 4. For data on worker autonomy see chapter 5. For data on rising wages see chapter 6. For summary remarks on these topics see pp. 162-167, 177-178.

production and the capitalist's own profit-maximizing motive dictate the capitalist's need to control the labor process and in doing so, to limit the opportunities for employees to exercise autonomy over their tasks and to make important decisions regarding the production process as a whole. And as wealth and ownership over the means of production both become increasingly concentrated within society, fewer citizens will have the ability to exercise these economic liberties.¹²⁷ Disparaging concerns over workplace conditions, for considerations exclusively in favor of income as Tomasi does, ignores the inability for many individuals to make important economic decisions and to exercise, in turn, a key feature of self-authorship emphasized by Tomasi. Elevating a thick set of capitalist economic liberties, such as the freedom to use commercial property and resources in productive processes, to the list of basic rights preserves a status quo that limits the exercise of these economic liberties for the vast majority of citizens; more specifically, it limits the exercise of these economic liberties for all those who lack ownership over productive capital and resources.

Two alternatives offer viable solutions as means for maximizing the evaluative horizons and economic decision-making responsibilities of citizens, neither of which, however, are compatible with elevating the economic liberties to basic rights. Whereas Tomasi claims that the capitalist economic liberties ought to be privileged, and enjoy a certain *status* as basic rights alongside other civil and political liberties, other philosophers have grounded the *application* of the right to private property, or the recognition that individuals *do* or *ought to have* such a right, either in more substantive conceptions of freedom or as part of the necessary exercise or

¹²⁷Tomasi again argues that increases in social wealth enhance workers' power to make economic decisions over productive resources because they can purchase stocks and bonds, so that "in the era of a personalized economy, workers literally come to own the means of production," p.188. But this is nothing more than empty hyperbole. 94.3 percent of households in the top 1 percent own stocks worth more than \$10,000. For the entire bottom 90 percent, only 19 percent of their wealth comes from ownership in stocks and bonds. <<http://www2.ucsc.edu/whorulesamerica/power/wealth.html>>. Accessed 17 February 2016.

development of some idealized conception of personhood. In these sorts of arguments, if private property is necessary for some more substantive or positive notion of freedom, or if it is necessary for individuals to develop and exercise some feature of personhood, then all individuals possess a *general right* to private property that generates a corresponding duty on the part of the state.¹²⁸ If we assume that it is the aim of the state to foster and preserve conditions necessary for the promotion of this type of freedom or the development of personhood, then the state has a duty to foster and preserve conditions that allow citizens access to property. This duty on the part of the state goes far beyond the protection of, and may actually require expropriation of, individuals' current holdings as within any extant distribution of property it will likely turn out that some individuals will lack any property whatsoever.¹²⁹ Those without any property would possess a stronger claim on the abundance of property possessed by others. If so, then the state would have to step in, especially in circumstances where ownership of property has become heavily concentrated, in order to redistribute property to allow citizens to develop or exercise features of personhood.

The above sort of argument can be applied towards Tomasi's conception of persons as self-authors. Maximizing the evaluative horizons of individuals requires that they have access to the means of production in order to make important decisions regarding their use and allocation in society. But in capitalism, where even under ideal conditions there is a tendency for the ownership of capital to become heavily concentrated within segmented portions of the population,¹³⁰ then it would be necessary for the state to step in and redistribute private property

¹²⁸Waldron, Jeremy. *The Right to Private Property*. Oxford: Clarendon Press, 1988, p. 287.

¹²⁹Waldon, p. 329.

¹³⁰Marx thought that it was inherent within the logic of capitalism for it to shift inevitably from its developmental forms of industrial capitalism to modern forms of monopoly or oligopolistic capitalism: "Changing technology as well as competition among capitalists create an inexorable movement of the capitalist system toward larger and larger firms owned by fewer and fewer capitalists."

over the means of production to ensure that all individuals possess the property necessary for exercising the first form of agency embedded within self-authorship—that is, expanding their evaluative horizons by maximizing the decision-making opportunities open to individuals in the economic sphere of life. Elevating the freedoms to hold and use property and resources in the productive resource to basic rights would, in a contradictory manner, prevent the state from preserving conditions necessary for the exercise of citizens’ self-authorship. In direct opposition to Tomasi’s position then, self-authorship requires at the least *not* elevating the capitalist economic liberties to basic rights to allow the state more flexibility in preserving conditions necessary for the maximal exercise of self-authorship.¹³¹

The second alternative requires a greater commitment to workplace democracy and a different set of economic liberties altogether. There are, as Steven Wall suggests, different sets of thick economic liberties.¹³² Similar to the capitalist economic liberties, some of “socialist” economic liberties might continue to emphasize individuals’ ability to make economic decisions in the workplace, but they may emphasize this ability at the expense of private ownership of the means of production. These liberties would be vital to self-authorship in the same way that the capitalist economic liberties that grant individuals the freedom to use productive property and resources are, and would, in consequence, deserve status as basic rights, especially as they protect the ability to make economic decisions for a greater number of citizens. It’s likely that the socialist economic liberties would do better at maximizing these opportunities for individuals in contrast to the capitalist economic liberties. At the very least then, self-authorship requires not

¹³¹I do not mean to defend the plausibility of such a system. The point rather is only that elevating the capitalist economic liberties to basic rights is fundamentally at odds with maximizing the economic decision-making opportunities of citizens.

¹³²Wall, Steven. “Self-Government, Market Democracy, and Economic Liberties,” *Social Theory and Practice*. 39.3 (2013): 522-534, pp. 528-529.

elevating the capitalist economic liberties to basic rights, and it may actually require elevating other, non-capitalist economic liberties to basic rights.

3.2.2 Economic Liberties of Working

The capitalist relations of production, in which the private owner of the means of production controls the labor process in the pursuit of greater productivity, diminishes the role of the economic liberties for those who sell their labor. Consider the economic liberties of working, which include the freedom to use labor in production, to negotiate the terms of employment, and freedom of occupational choice. Tomasi claims that the development and exercise of self-authorship requires elevating all three freedoms to the status of basic rights. But individuals are as free to negotiate the terms and conditions of their employment as they are to sell their labor in an economy where doing so is nearly the only option for survival for the vast majority of the population. Centralization of employment, and along with it the formation of the “work week,” stemmed from the capitalist’s desire to exert greater control over the labor process in contrast to the freedom and inefficiency associated with the putting-out system. As the capitalist gains further control over the labor process the individual becomes less free to negotiate the terms and conditions of employment. As mentioned previously, the capitalist’s effort to control the labor process does not represent some malfunction in capitalism but represents a rational response to the capitalist relations of production in which wage labor factors as a cost of production that the capitalist seeks simultaneously to minimize while also to extract as much labor surplus from as possible.

In the perpetual conflict between workers and capitalists Adam Smith thought that capitalists would always have the upper hand because of their ability to hold out much longer in negotiations due to their smaller numbers and their stored resources; their ability to control

public opinion through influence of the media; and finally, they often enjoy the benefits of an allegiance with the government that works in favor of their interests.¹³³ The history of unions in both England and the United States supports Smith's belief that capitalists would have the upper hand in bargaining against employees, particularly in regards to the assertion that the government would often work to promote the interests of capital. Collective bargaining and the solidarity among workers in unions have often been painted as a form of dangerous sedition and have been treated accordingly. The Combination Act of 1799 in England denied workers the ability to unionize. In the United States, the Sherman Act of 1890, originally designed to prevent corporations from forming monopolies, quickly became, as a product of judicial activism motivated by commercial interest, a tool to restrict the actions of organized labor.¹³⁴ It was not until the Fair Labor Standards Act passed in 1938 that the government federally mandated a minimum wage and a forty-hour work week to protect workers.¹³⁵ Besides the constant struggle to secure the legality of collective bargaining, the history of the labor movement in the United States is replete with examples of corporations employing the government against labor unions by utilizing the military as a tool for quelling labor strikes.¹³⁶

One might think that these remarks reinforce the argument to elevate the capitalist economic liberties to basic rights precisely in order to remove the state as a party with interests in transactions between employer and employee. However, under the pressure exerted by corporations, the state begins to function as an apparatus designed solely for protecting the property rights of corporations, for enforcing freedom of contract, and for preserving inequalities in bargaining power. Tomasi's desire to elevate freedom of contract to the status of a basic right

¹³³Hunt, pp. 49-50.

¹³⁴Dray, Philip. *There is Power in a Union: The Epic Story of Labor in America*. New York: Doubleday, 2010, pp. 214-220.

¹³⁵Dray, p. 459.

¹³⁶Dray, *There is Power in a Union*.

follows a long history in which the due process clause of the Fourteenth Amendment has slowly expanded to include more freedoms under its protection. The result of this process was, Phillip Dray notes, “the idea that employers and their workers were to negotiate and manage their relationship without government intrusion or regulation.”¹³⁷ In *Lochner v. New York* (1905), the Supreme Court interpreted the due process clause broadly enough to prevent the government from interfering with a business’ freedom of contract, even in the case of health and safety regulations.¹³⁸ One consequence of the decision was to begin the process by which corporations would come to gain the same rights as individual citizens. But another consequence was to ignore the nature of the disparities in the bargaining relations between employer and employee.

While working conditions have undoubtedly improved within the last two centuries, the fact of the matter is that the effect of unions has been mainly to improve working conditions within the given parameters of capitalism—namely by achieving shorter working hours, slightly higher wages, and more safety regulations—without drastically altering in any meaningful fashion the capitalist relations of production. “Trade unions, operating within the confines of capitalist institutions,” writes Ferdinand Lundberg, “have never challenged management’s prerogatives in deciding what to produce and have only marginal impact in deciding how to produce it.”¹³⁹ These latter abilities constitute, as shown above, key features of worker satisfaction.

The more contemporary and progressive opinion regarding state intrusion and regulation in employer-employee contracts depends on the assumption that the state intervenes on behalf of the *employee*. From the brief history depicted above, the government explicitly intervened on

¹³⁷Dray, p. 245.

¹³⁸Dray, pp. 244-250.

¹³⁹Lundberg, Ferdinand. *The Rich and the Super-Rich*. Cited in *The Capitalist System: A Radical Analysis of American Society*. Ed. by Richard C. Edwards, Michael Reich, and Thomas E. Weisskopf. New Jersey: Prentice-Hall, Inc., 1972, p. 183.

behalf of the employer during the eighteenth and nineteenth centuries by refusing to recognize, and for a range of years prohibiting altogether, workers' right to unionize and to engage in collective bargaining. It was not until the twentieth century where the government took a more progressive turn (perhaps mimicking the shift in intellectual thought beginning in the late nineteenth century) under the pro-labor presidencies of Woodrow Wilson and Franklin Roosevelt. The Fair Labor Standards Act, ushered in as part of the New Deal under the Roosevelt administration, served as the watershed moment for government intrusion in contracts on the behalf of the employees and workers. However, these executive and congressional encroachments upon freedom of contract have been contravened by the Supreme Court beginning with the *Lochner* case cited above, where the Court interpreted the due process clause broadly enough to prevent government intrusion with employer-employee contracts. In the contemporary world where the government plays a more active role in protecting employee interests by mandating employer-provided health insurance and retirement programs, Tomasi's argument to elevate the freedom to use labor in production and the freedom to negotiate the terms of employment to basic rights harkens back to sentiments expressed by the Supreme Court in *Lochner*. State regulation of working conditions is a *response* to disparities in bargaining power that adversely affect the freedom of workers to negotiate the terms and conditions of employment. Protecting these freedoms as basic rights in the name of freedom would work to protect the freedom of employers maintained by disparities in bargaining power, while undermining the protection afforded employees through government regulation. Yet again, self-authorship for Tomasi would appear as an ideal preserved for the few at the expense of the many.

3.3 Economic Inequality and Causal Agency

3.3.1 The Role of the State within Market Democracy

While the first aspect of self-authorship focuses on an individual's ability to make important decisions in the economic sphere of human activity, the second focuses on an individual's ability to translate those choices into actions meant to bring about some state of affairs. Not only does an individual desire to exert responsibility over the selection of a life plan, but the individual also desires to be, in Tomasi's terms, the effective cause for bringing that life plan to fruition. To be a self-author is to take control and individual responsibility over both these aspects of individual life.

Including both forms of agency within the ideal of personhood allows self-authorship to be more sensitive to the complementary relation between the two. Theorists writing on autonomy typically focus on what it means to undergo a process of critical reflection, which functions as a sieve filtering the resultant beliefs and desires of both external pressures and internal prejudices that attenuates any meaningful sense of responsibility and ownership. But while this cognitive component of autonomy is certainly important, it does not go far enough. If external circumstances limit (unfairly) an individual from pursuing those carefully formed ends in daily life, then we may reasonably come to question the importance of following the requirements of critical reflection in forming and selecting those ends. When Tomasi insists that individuals are self-authors to the extent they are responsible for producing the salient circumstances that color their lives, his concern extends beyond the possibility for the economic liberties to widen the scope for meaningful decisions. Protecting the economic liberties as basic rights further allows, according to Tomasi, individuals to function as the central cause for shaping their lives by pursuing and acting upon those decisions without paternalistic intrusions on the part of the

government. However, as we will see, elevating the capitalistic economic liberties produces economic conditions that make it difficult for individuals to play this central causal role in their lives, at least in any meaningful sense.

Like classical liberal regimes, market democracy values the economic liberties—in addition to their intrinsic value—because of their ability to stimulate growth through greater economic efficiency. By avoiding the cumbersome, myopic, and therefore inefficient apparatus inherent within systems of centralized planning designed for the purposes of allocating productive resources and distributing produced goods, economic liberties allow market systems to perform these functions through an “invisible hand,” which caters to the demands of individuals and thereby increases social welfare. Welfare economists explain how under ideal conditions the perfectly competitive market (PCM) produces Pareto optimal outcomes.¹⁴⁰ The sufficient criteria for a perfectly competitive market are:

C1: Resources are privately owned and privately consumed.

C2: Force and fraud does not exist.

C3: There are many buyers and sellers, and entry and exit to the market is free.

C4: Transactions are costless.

C5: Individuals’ utility functions are stable, monotonic, and transitive.

Under the PCM, all economic relations are seen as forms of voluntary exchange that improve the utility or preference-satisfaction of the involved parties. For example, when a laborer sells his or her labor power to a capitalist, this is viewed as a mutually beneficial transaction that improves outcomes for both parties. As individuals and groups engage in a successive series of exchanges

¹⁴⁰Cudd, p. 66. Pareto optimal outcomes are cases in which the position of one individual or group cannot be improved without worsening the position of another individual or group.

they will eventually reach a Pareto optimal outcome in which the positions of no single individual or group can be improved without worsening the condition of another.

Under this sort of model, the state plays an important but limited role in society by enforcing property rights and contracts as well as imposing anti-trust laws to allow prices to operate naturally in response to consumer preferences. The government's role in economic matters is accordingly limited to these few functions and perhaps the implementation of a basic minimum, while it notably excludes any redistribution of wealth and income. Its role is to protect conditions for the PCM and to foster an environment that allows individuals within the market to engage freely in mutually beneficial exchanges on their own terms and in pursuit of their own ends in order to produce a Pareto optimal outcome.

3.3.2 The Effects of Economic Inequality on Self-Authorship

Elevating the capitalist economic liberties to the list of basic rights effectively prevents the government from overstepping its bounds on economic matters and frees the market to operate in ways conducive to maximizing economic growth.¹⁴¹ To further illustrate this point Tomasi compares a capitalist regime that protects a thick set of economic liberties that consequently limits the purview of governmental influence, to a social democratic regime which enshrines only a thin set of economic liberties—only the right to hold personal property and the freedom of occupational choice—leaving the rest of the economic liberties susceptible to governmental interference. Over time the capitalist regime that protects the thicker set of economic liberties vastly surpasses the social democratic regime in terms of economic growth.

¹⁴¹Tomasi writes: "The deep idea of market democracy is to reduce the range of economic activities in which government in a liberal society would feel any need to take a direct and active role," p. 109.

All citizens, even those from the poorest economic class, are better off in terms of levels of wealth under the capitalist regime with its constitutional support for the economic liberties.¹⁴²

Tomasi concludes from this thought experiment that economic growth—as generated through constitutional protection of the economic liberties—further expands the self-authorship of citizens by better providing the material resources needed to pursue their carefully constructed life plans. The overall increase in wealth has a positive transformative effect: “As people gain wealth, their formal freedoms become more valuable to them.”¹⁴³ If we had to re-phrase this effect in terms of the agential components of self-authorship, the idea is that an increase in wealth promotes the second form of agency—causal agency—by transforming previously formal freedoms into substantive freedoms. Tomasi thus concludes that his version of the difference principle, which improves the socioeconomic standing of the worst off in society by maximizing their wealth and income, better realizes the aim of social justice than the Rawlsian framework.¹⁴⁴

Besides the difference in the overall levels of growth and wealth between the capitalist and social democratic regime, another important difference between the two regimes resides in the levels of economic inequality. In the capitalist regime the wealth and income levels between the richest and poorest expose a greater economic disparity than that found in the social democratic regime. The difference in economic wealth between the rich and poor in the capitalist regime is near 1500 points or “economic units,” while the difference in the social democratic

¹⁴²Tomasi, p. 235.

¹⁴³Tomasi, p. 190.

¹⁴⁴Tomasi, pp. 190-194, 230, 232. It’s not clear to me what function Tomasi’s version of the difference principle actually plays within market democracy. He rejects “trickle down” economics, but he also rejects the notion that the difference principle plays any sort of redistributive, and conditional (ala Rawls), function over constricting morally permissible distributions within the market. There is no mention of how the difference principle actively ensures that all members will enjoy increases in wealth and income. His comments appear to imply, despite his explicit exhortation to the contrary, that economic growth will trickle down to all members of society. Elevating the economic liberties to basic rights, and not the difference principle, is the catalyst responsible for economic growth under market democracy. I suspect that his appeal to a difference principle is nothing more than a rhetorical attempt to draw more ostensible similarities with Rawls’s theory.

regime is around 70 points.¹⁴⁵ Defenders of capitalism tend to treat growth as a panacea for the economic, social, and political problems that plague all societies. Cudd, for example, writes that “Although wealth inequalities can create social instability, poverty is really the underlying difficulty. If capitalist development provides a solution to poverty...then it attacks the root of many of the problems (poor health, inadequate education, unemployment) that lead to social instability and human misery.”¹⁴⁶ While Cudd focuses her attention on poverty as the panacea, poverty is best minimized through an economic system that produces strong economic growth. Tomasi views economic growth in the same manner and disregards the effects of economic inequality. Not only can it not simply be assumed that economic growth entails economic growth for all sections of society,¹⁴⁷ but large degrees of economic inequality generates entirely distinct social problems of its own.

If we assume that economic growth does indeed trickle down to the poorest members of society, high levels of economic inequality will have an adverse effect on the ability for those at the bottom end of the economic gap to exercise their self-authorship effectively and meaningfully. Economists and philosophers typically measure the benefits of economic growth through intergenerational comparisons. Individuals of the present generation are judged to be better off because they enjoy higher life expectancy, lower infant mortality rates, and better living conditions than members of previous generations (and sometimes even better in comparison than those members that comprised the wealthier classes of previous generations).¹⁴⁸ However, intergenerational comparisons ignore both the economic and social standing of

¹⁴⁵In the capitalist regime the rich enjoy 2020 “economic units” while the poor only 505, and in the social democratic regime the values are 173 and 108, respectively. Tomasi borrows the numbers and the thought experiment from Jason Brennan. Tomasi, p. 235.

¹⁴⁶Cudd, p. 82.

¹⁴⁷Samuel Arnold argues that economic growth does not automatically always find its way to the poorest members of society. “Right-wing Rawlsianism: A Critique,” *Journal of Political Philosophy*. 21.4(2013): 382-404, pp. 396-398.

¹⁴⁸Cudd, pp. 33-62.

members relative to other members within a given society (and across societies and countries). As we will see, fostering conditions that promote the exercise of self-authorship requires special attention to citizens' ability to traverse and negotiate the economic, social, and political terrain for scarce and prestigious goods—an ability inherently relative to other members in society. High levels of economic inequality make it supremely difficult for those at the bottom end of the economic spectrum to compete with those who possess large amounts of wealth and income and to exercise their causal agency in any meaningful way.

The problem stems from capitalism's tendency to transform most aspects of society into commodities governed by norms of market exchange. As the market exceeds its initial bounds, more and more goods in society are transformed into commodities valued on the basis of their exchange value. The commoditization of non-market goods introduces norms of market exchange that intrude upon spheres of life previously free from economic motives. Economic motives of egoistic and self-interested gain through mutually beneficial and impersonal transactions supplant social relationships built on generosity, trust, and compassion.¹⁴⁹ The increasing commodization of society has other important ramifications as well.

Besides the intrusion of market norms into non-economic spheres of life, the pervasive commoditization of goods dramatically increases the importance of money. In a world where most things are up for sale, money becomes king in procuring those goods. In Michael Walzer's terminology money functions as a "dominant good"—a good possession of which allows access to and command over a wide range of other goods in society.¹⁵⁰ Any society that arranges its institutions to distribute goods exclusively through the market without at the same time

¹⁴⁹Elizabeth Anderson describes the motives and norms that dictate valuation of economic goods as impersonal, egoistic, and want-regarding. See *Value in Ethics and Economics*. Cambridge: Harvard University Press, 1993, chapter 1.

¹⁵⁰Walzer, Michael. *Spheres of Justice: A Defense of Pluralism and Equality*. New York: Basic Books, Inc., 1983, p. 10.

constraining wealth and income inequalities will be susceptible to the effect that those inequalities have over citizens' purchasing power.

For illustration of this point, consider Tomasi's market democracy. In lieu of elevating the capitalist economic liberties to basic rights market democracy provides few institutional guarantees and seeks instead to provide most social goods through the market. Besides the assurance of a basic minimum meant to alleviate citizens from the dire circumstances of poverty, the government's role in market democracy is, as we saw before, to "refine and protect property rights, provide for the common defense, and provide for a small number of genuinely public goods."¹⁵¹ What public goods does Tomasi include within the government's purview? While he admits that all citizens are owed health care and education as a matter of justice, "Market democratic regimes thus emphasize *market mechanisms* in pursuit of a superior system of education and health care for all (emphasis mine)."¹⁵² Furthermore, guarantees of equality of opportunity are largely formal and in some cases do not even prevent racial, gender, and other forms of discrimination in the hiring process as enforcement of anti-discrimination laws would conflict with the employer's exercise of economic liberty in running a business.

The problem is that even if we take for granted that the quality of education and health care has improved compared to what was available to prior generations, access to better and more prestigious forms of education and health care within the current society would be determined by the purchasing power of competing individuals within the market. Now one might object that these differences in purchasing power that provide access to better quality education or health care are not unjust given the assumption that the quality of both of these goods, even for those at the bottom of the wealth and income inequality gap, have improved relative to prior

¹⁵¹Tomasi, p. 230.

¹⁵²Tomasi, p. 241.

generations. The problem with the objection is that it ignores the effects on self-authorship produced by economic inequality when all goods are offered primarily, if not exclusively, through the market. The range of choices open to individuals as well as the ability to pursue those choices, and a life-plan more generally, are either constrained or open relative to the similar ability possessed by other individuals *within society* to compete for those very same goods. Even if the quality of some of these goods, such as education and healthcare, has improved over time, their ability to enhance the self-authorship of citizens will still depend on their quality relative, not to prior generations, but to what else the market offers. What is more important for both forms of agency embedded within self-authorship is the distribution of these goods within society, and particularly, the distribution of the higher quality and more prestigious versions of these goods.

First, the inability for individuals at the lower end of the inequality gap to compete with individuals at the higher end in terms of purchasing power has a direct effect on the first form of agency by reducing the number of choices available. There is a sort of qualitative inflation. With significant disparities of wealth in society the market will naturally adjust to match the demand of those with higher levels of wealth and income by offering more prestigious and better quality versions of those goods, such as education, at more expensive rates. Institutions that offer goods exclusively through the market begin to function as businesses where the main motive becomes the capitalist economic motive of capital accumulation or profit; as a result, membership criteria and access to these goods come to reflect pecuniary interests and belie the non-economic purposes for which the institutions were first designed. And with no comparable alternative for the provision of these goods outside the market, individuals with less wealth and income will be unable to compete for access to these goods against those with more wealth and income and will

be stuck with the meager offerings—in terms of relative quality—provided by the market. The higher costs for more prestigious versions of goods function in effect as barriers for those who lack the monetary means. An increase in wealth at the bottom of the socioeconomic ladder transforms formal freedoms into substantive freedoms only if the relative wealth of others remains constant. If the wealth of others in society continues to grow as well, then the point at which many of those freedoms would have been substantive rather than formal increases in turn.¹⁵³

Consider this abstract point in more concrete terms. The effects that come about from disparities in purchasing power become even more pronounced when one remembers that Tomasi's market democracy ensures only formal equality of opportunity, where access to work is merely open to talents, and there are no safeguards designed to mitigate the disadvantages imposed by differences in socioeconomic status. Access to different qualities of goods provided exclusively by the market will be determined by levels of wealth and income in such a way that perpetuates a hierarchical class system with little to no upward mobility. These economic inequalities both compound and perpetuate inequalities in other domains of life when children of affluent families are sent to expensive private schools that serve as a fast track to admittance in more prestigious colleges and universities, which serves in turn as a springboard for acquiring more lucrative jobs.

In fact, the educational system in the United States exhibits a long history of segregating students according to socioeconomic status. In the height of the manufacturing era, schooling

¹⁵³It's unlikely that in "trickle-down economics" that the rate of wealth increase is equal for all earning brackets; typically, wealth increases are larger at higher income brackets. Notice that in the thought experiment alluded to earlier that the wealthy increase their wealth at a much quicker rate than those at the bottom. Furthermore, the problem of diminished purchasing power would subsist unless those at the bottom gained wealth at a proportionally increasing rate (assuming that inflation did not also increase simultaneously) relative to those at the higher levels—at a rate that would have the effect of *diminishing* economic inequality.

was designed in such a way to accustom students to the type of work they were expected to do. In an article by David Cohen and Marvin Lazerson, they write that “The schools’ role was to socialize economically desirable values and behavior, teach vocational skills, and provide education consistent with students’ expected occupational attainment.”¹⁵⁴ Even in more modern times, schools in more affluent neighborhoods adopt different curricula, emphasize different aspects of the same curriculum, and exhibit different modes of teaching than those in poorer neighborhoods. The former would emphasize creative thinking and qualities necessary for the exercise of leadership while the latter would emphasize discipline, punctuality, and acceptance of authority—traits especially necessary for success in manufacturing and service industries.¹⁵⁵ The effect of unequal schooling is to stymie any opportunity for class mobility and to reinforce the existing class structure necessary for the capitalist mode of production, where a large portion of the population has to perform socially undesirable but functionally necessary occupations.¹⁵⁶

This is the unfortunately sobering response to the objection that capitalism necessarily provides more expansive occupational choice for individuals. Competition in the labor market ultimately depends on an individual’s ability to improve the quality of his or her labor power through more specialized and relevant training, particularly in a “knowledge economy” where work demands higher levels of skill.¹⁵⁷ In a system where goods such as education are provided by the market, the diminished purchasing power of those at the lower end of the gap denies their

¹⁵⁴Cohen, David and Lazerson, Marvin. “Education and the Corporate Order,” cited in *The Capitalist System*, p. 184.

¹⁵⁵Bowles, Samuel. “Unequal Education and the Reproduction of the Hierarchical Division of Labor,” cited in *The Capitalist System*, p. 220.

¹⁵⁶Charles Murray’s recent book *Real Education: Four Simple Truths for Bringing America’s Schools Back to Reality* (New York: Cox and Murray Inc., 2008) represents a more contemporary formulation of this mode of thought. He claims, as has been argued in the past, that natural differences in IQ between those at opposite ends of the economic spectrum justify tailoring educational institutions and opportunities to match those differences in IQ. But if one reads current differences in socioeconomic status as a consequence of lack of opportunities rather than natural differences in IQ, then it would be unjustifiable to design educational institutions to further perpetuate the class hierarchy and the circumstances that led to the formation of that hierarchy in the first place.

¹⁵⁷See chapter 2 of Green’s *Demanding Work* for a discussion of the trend in recent years of an increase in the rising level of skill.

access to better quality versions of these goods and in turn makes it more difficult for them to compete against those who do have access by acquiring the necessary skills and training.¹⁵⁸

Circumstances of drastic wealth and income inequality effectively stack the competition against those at lower levels so heavily—where the prospects of success are so dismal—that pursuing certain life plans reaches a point of irrationality. For we should remember that as part of the agency involved in forming and developing life plans Tomasi requires that citizens “realistically assess” the options before them, which includes, as part of that assessment, incorporating the effect that their socioeconomic standing has on their prospects of success in pursuing different life plans. If these individuals were to adjust their life plans more in line with the opportunities typically available for individuals of their socioeconomic status—pursuing, for example, lower-skilled jobs with little pecuniary reward and prestige—in light of the realistic assessment required, then not only would their “evaluative horizons” be more limited, but their exercise of causal agency would become trivialized. It would be trivialized in the sense that we are left with a normative ideal that would always simply incorporate as part of its evaluation of outcomes conditions extant in the status quo.

On the other hand, if individuals ignore the conclusions of their realistic assessment by forming and pursuing life plans in which their prospects of success are dismal, then the two components involved in forming a life plan—the maximization of evaluative horizons in light of a realistic assessment—are in tension with each other. Individuals can maximize their evaluative

¹⁵⁸One may object that the criticism presented here depends on the existence of non-ideal conditions, while Tomasi’s argument operates on ideal grounds. But the “inflation of goods” will occur even in ideal conditions: where there is a demand for higher quality and more prestigious goods the market will accommodate that demand through higher prices. Even if we assume, as we have been, that the quality of education at the lower levels has improved compared to the prior generations, it’s not self-evident that the market by itself will be able to provide higher quality goods—relative to those at the top—to those at the lower end of the socioeconomic ladder. Because the rate of wealth increase is slower at this level, individuals will still have less disposable income. It follows that educational institutions aimed for individuals at this level would have lower profit margins. And it’s not clear whether these lower profit margins would be enough to justify, from a capitalist’s perspective, provision of these goods.

horizons only by ignoring any realistic assessment of those opportunities. Furthermore, if we are to persist in maintaining that individuals exercise causal agency even in these circumstances—that is, we maintain that individuals can be attributed primary causal responsibility for bringing about the outcome—while they ignore the conclusions discovered by their realistic assessments, then the idea of causal agency operates only as a descriptive tool rather than as a normative ideal. If individuals willfully ignore the dictates of their realistic assessments—perhaps because those assessments incorporated objectively unjust structural features—and we insist in claiming that these individuals be held causally responsible for producing the outcome in light of this fact, then it follows that the application of causal agency ignores any evaluation of the causal role that these external structural features may have played. We are left with a “normative ideal” that disregards entirely relevant information in its evaluations of outcomes, and in such cases, all individuals would turn out to be self-authors merely by default.

In either case causal agency becomes a trivialized notion lacking normative force. For in the first case individuals exercise their causal agency as they act according to their assessments that have incorporated extant (unjust) structural features; in the second case individuals are causally responsible in light of ignoring their assessments. Thus, in the first case the attribution of causal agency simply incorporates the (unjust) structural features without evaluating them; in the second case the attribution of causal agency disregards them altogether. Rendered in such a way causal agency hardly represents a normative ideal.

It would be remiss of us to ignore the significant explanatory role that these external factors play in producing these states of affairs, and if our aim is to expand the scope and degree of both forms of agency that form self-authorship, then there are good reasons to include these factors within our analysis of institutional regimes. After all, on Sen’s comprehensive approach

causal agency is only one among a number of criteria relevant to the evaluation of how a certain outcome comes about. Unless we incorporate the explanatory role played by external factors as part of our evaluation of outcomes, we are left with the above dilemma where all individuals are attributed primary causal responsibility merely by default. Tomasi's own analysis of how redistributive measures diminish the causal agency of beneficiaries suggests that we ought to incorporate these broader external factors into our analysis in these cases as well. It stands to reason then that the distribution of wealth, in a society where all important goods that contribute to the exercise of self-authorship are provided *exclusively* through the market, is a relevant factor that must enter our analysis concerning the justness of the proposed economic arrangement. For if a particular economic arrangement allows a distribution of wealth that hinders the exercise of self-authorship for many individuals within that society—by heightening the causal role of external factors and thereby diminishing the importance of the individual's own actions in the causal explanation—then that would be a weighty reason *against* implementing that economic arrangement. An economic arrangement that elevates the capitalist economic liberties to basic rights is one example of an economic arrangement that permits a distribution of wealth—precisely in virtue of protecting those liberties as basic—that impairs the exercise of self-authorship—in both forms of agency—for many individuals.

Unconstrained economic inequality in a society that offers goods exclusively through the market will produce conditions inhospitable for the development and exercise of the self-authorship for those at the lower ends of the inequality gap. First, their diminished purchasing power over goods offered by the market will ultimately limit the choices available to them. This, in turn, will make it more difficult for individuals to exercise their causal agency in non-trivial and meaningful ways.

A degree economic inequality will always be inevitable if growth is possible, but as the gap increases and as wealth becomes more concentrated, then the ability for many individuals to be self-authors decreases inversely. Under such circumstances, the government would need, in order to promote conditions hospitable for the exercise of self-authorship, the ability to interfere within economic matters either to constrain economic inequality or to break up concentrations of wealth. Elevating the capitalist economic liberties to basic rights prevents state-implemented redistribution for the sake of reducing wealth and income inequalities; it also forestalls the implementation of inheritance laws, among other things, designed to prevent large concentrations of wealth from passing from one generation to the next. A moral and normative concern for self-authorship requires, instead of elevating the capitalist economic liberties to basic rights, maintaining their status as non-basic rights in order to allow state intervention within different aspects of the market economy to ensure conditions suitable for the exercise of self-authorship.

3.4 Balancing Problems in Promoting Self-Authorship

From the discussion above there seem to be reasons for elevating the capitalist economic liberties to basic rights and reasons for not doing so. Tomasi claims that redistributive measures permitted as a consequence of *not* elevating the capitalist economic liberties undermine citizens' causal agency. I claim on the other hand that elevating the capitalist economic liberties to basic rights undermines *both* forms of agency for the vast majority of citizens. To make any further headway in how we ought to proceed in promoting self-authorship by balancing and adjudicating between these conflicting reasons there are two important sets of concerns that require attention.

The first set of concerns deals with the modalities involved in self-authorship, which I discussed in the first section. There we saw that Tomasi understands the first form of agency—

the expansion of evaluative horizons—as an ideal that ought to be maximized. There is a slight ambiguity in exactly what ought to be maximized here. The most plausible (and charitable) way to interpret Tomasi’s position from a normative standpoint is to understand the promotion of self-authorship as an attempt to maximize the set of liberties for *all* citizens and not to maximize the set of liberties for only a select group of citizens. This means that the set of liberties to be maximized is the set of maximal, *compossible* liberties, and not simply the total number of liberties. The argument in the second section demonstrated that the maximal, compossible set of freedoms protected as basic rights *cannot* include the maximal set of capitalist economic liberties. For the effect of preserving the maximal set of capitalist economic liberties as basic rights is to diminish the maximal, compossible set of freedoms that the vast majority of individuals can exercise.¹⁵⁹ On the other hand, without constitutional protection for the capitalist economic liberties, then individuals who were already able to exercise those liberties remain free to do so (to certain extents), while the state will be able to preserve conditions that allow other individuals to exercise those freedoms as well.

The second set of concerns that requires attention is the temporal dynamics involved in causal agency and self-authorship more generally. In making his case against redistribution, Tomasi makes several assumptions regarding the temporality and value of causal agency. He treats the causal agency involved in producing a state of affairs as of intrinsic value. Such a segmented and isolated view implied by Tomasi’s analysis is at odds with the very notion of life

¹⁵⁹When phrased in this manner it may appear as if I am equivocating between formal and substantive notions of freedom to generate a sort of paradox. But it is important to remember that these freedoms are grounded in the two forms of agency embedded within self-authorship. Therefore, there is nothing paradoxical in saying that protecting more freedoms (the capitalist economic liberties) as basic rights reduces the evaluative horizons and economic decision-making opportunities open to individuals because of the conditions that come about in lieu of the privileged protection afforded those freedoms. In more general terms, a maximal, compossible set of freedoms need not, and likely will not, include as part of *that* set the maximal number of individual freedoms available, for the more freedoms included within that set, then the more difficult it will be to ensure that the set is compossible among individuals. Compossibility restricts the number of freedoms that can be included. For additional comments on this point, see section 2 of chapter 4, especially p. 142, footnote 204.

plans, which are comprised of (cumulative and) successive states of affairs each of varying levels of value. Where for one individual the causal agency undermined through redistributive measures entails a significant blow to their value structure and self-respect, another individual may view the newfound wealth as a constituting condition that allows their causal agency—which may have been futile or impotent without that wealth—to bring about other, more valued state of affairs that form part of their life plan.¹⁶⁰ We cannot make assumptions regarding the value of causal agency in producing particular states of affairs at particular moments, nor can we make assumptions regarding the value of causal agency in the future, as if the causal chain is forever tainted because the individual's causal agency at t_1 was not primary. The promotion of causal agency, and self-authorship more generally, from an institutional perspective ought to take a more flexible and holistic approach.

When we include these considerations in our weighing and calculation of reasons as to the promotion of self-authorship, then it is clear that more weight lies on the arguments against elevating the capitalist economic liberties presented in this chapter. These arguments are more sensitive to the effects that the elevation of the capitalist economic liberties would have for the vast majority of the population, and in this sensitivity, they express greater fidelity to the very values, aspirations, and motivations that Tomasi himself uses to depict self-authorship.

3.5 Conclusion

Tomasi cites the American constitutional framers as examples of men who recognized the importance of economic liberty as a means for resisting the yoke of a rapacious tyrant. Individual rights over property curtailed the tyrant and the government's ability to dictate and control the

¹⁶⁰In either case, this is certainly an important choice of the sort that Tomasi champions that ought to be left to individuals. Redistributive programs can be of an opt-in model, instead of prohibited altogether as a consequence of elevating the capitalist economic liberties to basic rights. In this way they would reflect the individual's own value system and self-authorship.

lives of individual citizens. For some. For then as now, wealth and property were concentrated in the hands of a small privileged group. Tomasi's historical account of the genesis of the United States attempts to pose an antithesis between the interests of vulnerable citizens and the corrupt, tyrannical government. Such a picture still holds true in less developed countries ruled by pugnacious and merciless dictators where the rule of law is hardly even a formality.

But in modern capitalist societies—where governments and politicians alike, lured by their own greed, operate within a political system permeated by the influences of money at every step so that those who would work in favor of public interest are rendered impotent because of their financial and commercial naiveté—the historical concern of a tyrannical, belligerent, and capricious monarch or aristocracy opposing the interests of the people is largely anachronistic. The concern today is the government's subservience to the commercial and corporate interests of those wealthy enough to dominate and influence the government's power for the benefit of their own interests. The duality of the antithesis is now between those with large amounts of wealth, the dominant means to nearly all other ends in modern capitalist society, and those whose existence is signified by its relative absence. Elevating the capitalist economic liberties to the privileged place of basic rights would further cement a status quo inhospitable to the development and exercise of self-authorship for the vast majority of the population and would simultaneously, render the government inept in its efforts to promote that very ideal.

4 On the Connection between Self-Ownership and Full Ownership

Since the publication of Robert Nozick's *Anarchy, State, and Utopia* there has been a resurgence of academic interest in libertarian thought. At the very foundation of libertarianism is a conception of persons as self-owners, and much of the literature has accordingly grappled with self-ownership and its role within libertarian thought. Those writing from the left have been intent on showing that self-ownership is compatible with the typical menu of progressive programs designed to promote social justice. In many cases their arguments fail to generate an internal critique of libertarianism as they tend to ignore the particularly thick manner in which libertarians construe self-ownership. Because of its thickness, such arguments directed against libertarian self-ownership must proceed at one step higher—at a pre-political level in the state of nature. The nature of self-ownership and its primary features is still an open question at this level of theory.

I turn to these issues in this final chapter. The first section of the chapter distinguishes between the Lockean conception of self-ownership from the contemporary libertarian conception. While Locke has a relatively robust account of self-ownership, it is much more limited in its details than its counterpart located within libertarian theory, and it is important to understand why. The first and second section take considerable pain to emphasize the two features central to libertarian self-ownership: that it embodies a negative conception of liberty and that its ownership rights take on the status of basic rights. It is these two features that are typically ignored by those philosophers who seek to provide internal critiques of libertarianism in their attempts to derive a more progressive institutional regime from self-ownership. Section two considers one such attempt in detail. The idea is to further motivate the necessity of tackling these issues at a higher theoretical level than many philosophers have done. This is the task of

the third section, which launches two arguments against libertarianism meant to show that self-ownership is indeterminate at that higher level, particularly when it comes to determining the status of the capitalist economic liberties.

4.1 Two Conceptions of Self-Ownership

4.1.1 Lockean Self-Ownership

Contemporary libertarians, and most contemporary adherents of liberalism in general, gesture towards John Locke as the intellectual forerunner responsible for popularizing many of liberalism's most basic tenets, and in doing so, liberals of many different, and often conflicting, ilk fondly draw on Locke as a historical springboard for their own favored versions of liberalism. Because of this, Locke's liberalism has been appropriated for a number of different positions within the liberal tradition. One aspect of Locke's political philosophy that libertarians take themselves to share a special affinity with and that serves as the basis for contemporary libertarianism is Locke's idea of self-ownership.¹⁶¹ Yet, despite the nominal likeness, the conception of self-ownership employed by contemporary libertarians bears little resemblance to Locke's understanding of the concept, and to better understand the libertarian version it will prove helpful to consider in some detail and as a foil Locke's conception of self-ownership.

Locke's theological premises set the stage for how his conception of self-ownership unfolds. According to Locke, God created the universe and its resources for the survival of the human species and for human beings to enjoy the conveniences of life.¹⁶² These two premises—that (1) God created the universe (including human beings) and its resources (2) for the survival

¹⁶¹It is not only libertarians who share this affinity with Locke. Even socialists find themselves drawn towards the allure displayed by the idea of self-ownership. For an explanation of why and how a commitment to self-ownership creates tensions within the socialist position, see Gerald A. Cohen's book, *Self-Ownership, Equality, and Freedom*. Cambridge: Cambridge University Press, 1995.

¹⁶²My comments in the following pages are heavily indebted to the discussion found in Jeremy Waldron's *A Right to Private Property*. Oxford: Oxford University Press, 1988, chapter 6.

of the human species—operate to constrain Locke’s understanding of self-ownership. From the first premise it follows that parents lack creator rights and ownership over their offspring. From both premises it follows that individuals lack *full* ownership rights—roughly the rights to do what they want—over their own bodies: Locke denies that individuals are free either to contract into slavery with others or to destroy their own lives.¹⁶³ For an individual to grant ownership rights over her body to another individual or to commit suicide would in both cases violate God’s ownership rights in human beings. In fact, as Waldron points out, Locke never claims that individuals have property rights in their own bodies; Locke says, rather, that “every man has a Property in his own Person. This no Body has any Right to but himself.”¹⁶⁴ What Locke means by “Person” and what it means to have property in one’s own person will be discussed shortly. What is important here is that Locke denies that individuals have the sort of property rights in their selves analogous to property rights that individuals might acquire in any other sort of object. Self-ownership, for Locke, does not imply full ownership of one’s body as full ownership rights would conflict with God’s ownership rights in human beings.

What does it mean to have property in one’s person rather than one’s body? Locke denies, as we saw, that humans possess creator’s rights over their own or anyone else’s body. It turns out that Locke’s view of human freedom is essential to understanding the connection.

Waldron describes it in the following way:

A free agent, on Locke’s account, has the power to perform or forbear any action by his own deliberate choice. He considers the actions open to him, deliberates, and determines upon one of them rather than the others. In so doing he is the initiator of a set of events in the world. Since he could by a contrary determination have avoided them, it is because of

¹⁶³Waldron, pp. 145, 177-178.

¹⁶⁴This quotation is originally from section 27 of Locke’s *The Second Treatise of Government*. The quotation is cited in Waldron, p. 178.

what *he* did (not anyone else, not even God) that those events took place. He, then, is the creator of these events.¹⁶⁵

Though humans lack creator rights over their bodies, they are “creators” of their actions. Because a person is conscious of the ability to act freely she becomes a creator of her actions by choosing to act in one way rather than another, and in so choosing, she takes responsibility, or ownership, over her actions.¹⁶⁶

Waldron insists that this technical reading of self-ownership—ownership in the person as opposed to the body—provides a *prima facie* stronger (though ultimately inadequate) basis for Locke’s theory of appropriation and specifically his mixing-labor argument. The standard interpretation of the mixing-labor argument construes self-ownership as ownership over one’s body. But ownership in my body would fail to grant ownership rights in external objects because my body does not become annexed to or mixed with those goods in any literal way. “What Locke needs,” according to Waldron, “is some intelligible sense for the idea of property rights in the *work* of one’s body, in one’s *actions* and one’s *labor* (emphasis original).”¹⁶⁷ It is the technical conception of self-ownership that directs us to our actions and action types, rather than our bodies, as the source of the moral legitimacy of appropriation.

However, as Waldron points out, there persist insurmountable difficulties in the ability for this conception of self-ownership to justify appropriation of physical objects. First of all, it is not clear that actions are the appropriate subject matter of practical property rights and that they can be “owned” in anymore than a figurative or attributive sense.¹⁶⁸ Parents’ ownership of their

¹⁶⁵Waldron, p. 179.

¹⁶⁶Locke writes, “Person is a Forensick Term *appropriating* actions and their merit,” emphasis mine. Cited from Waldron, p. 179.

¹⁶⁷Waldron, p. 180.

¹⁶⁸Waldron thinks that any sense of ownership involved in this attributive sense is far too weak for generating ownership rights of control and use in external objects, p. 181.

children's actions amounts to nothing more than assigning parents legal responsibility, and consequently, culpability for the actions of their children until the children reach the age by which the law recognizes them as legal persons responsible for their own actions. But parents do not "own" the actions of their children in any more robust or practical sense than this that would allow them to contract ownership of their children's actions to others. It's not clear how an attributive sense of ownership in one's actions translates to a practical sense of ownership—in terms of identifiable and enforceable property rights—that is capable of generating a corresponding enforceable claim over objects in the external world.

Furthermore, this reading of ownership in the person as opposed to the body carries odd implications for the nature of property rights more generally, and it's not clear whether Locke would endorse some of these implications. Conceptually, at least, the division of such a right is not problematic. If labor, for example, is one "action type" and one individual has a right to the person, or at least this particular action type, of another person, then it would follow that the first individual is responsible for the second individual's labor and, on Locke's account, presumably what the labor is mixed with (assuming the connection can be made). However, this understanding of ownership suggests that "person" is a fragmented concept with the potential for complicated ownership rights in different sets of action types within the same individual.¹⁶⁹ And on this reading it's not clear when an individual no longer becomes a person. Is it when just over half of the individual's action types are contracted to other individuals? Or are there certain action types of particular importance so that if the individual were to contract them then the individual would no longer be a person?

¹⁶⁹Nozick explores something along these lines, see *Anarchy, State, and Utopia*. New York: Basic Books, Inc., 1974, pp. 282-285.

It's clear that this attributive sense of ownership in the person fails, as Waldron himself admits, to fill the gaps in Locke's theory of appropriation. Plenty of ink has been split on these issues, and I cannot hope to solve them here. Fortunately, finding solutions to these problems is neither relevant nor necessary for my purposes. What is relevant is understanding Locke's conception of self-ownership. Lockean self-ownership consists in attributing responsibility and ownership over *actions*, and not, as the contemporary libertarian so construes it, a property right in the individual's *body* that permits its destruction or barter and exchange along with other objects of personal property, such as a toaster. In the following subsection we will look more closely at the libertarian conception of self-ownership to further differentiate the two.

4.1.2 *Libertarian Self-Ownership*

In Robert Nozick's *Anarchy, State, and Utopia* we find one of contemporary libertarianism's canonical works, if not its foremost and staunchest defense. Despite the book's unquestionable success in reviving and locating libertarianism as a viable alternative to other forms of liberalism,¹⁷⁰ it does so, notoriously, without bothering to delve into the moral foundations of libertarianism.¹⁷¹ The book largely ignores these issues, and for the most part Nozick takes it for granted that individuals have certain rights and sets out to show in the rest of the book how a state can arise and the extent to which it can operate if it is to avoid violating those rights. In this subsection I present Nozick's brief and assorted comments on the foundations of rights to explore the connections between the ideas he expresses within the book and the libertarian conception of self-ownership. For while it has become standard to associate

¹⁷⁰Not all philosophers believe that libertarianism is a form of liberalism. See Samuel Freeman's "Illiberal Libertarians: Why Libertarianism is Not a Liberal View," *Philosophy and Public Affairs*. 30(2)2001: 105-151.

¹⁷¹Nagel, Thomas. "Libertarianism without Foundations," in *Reading Nozick*. Ed. by Jeffrey Paul. New Jersey: Rowman and Littlefield, 1981, pp. 191-205.

libertarianism with self-ownership and its attendant freedoms, self-ownership does not, at least ostensibly, possess a prominent place in Nozick's book (it is not listed in the index).

While Nozick does not delve too deeply into the foundations of his moral and political theory, both are lodged firmly within the Kantian tradition. He views rights as limiting the scope of permissible actions open to other individuals and the state; neither is to act in ways that violate the rights of others. A conception of rights as strong side constraints that limit permissible modes of action reflects, according to Nozick, the Kantian principle that individuals are ends and not merely means to be used for the purpose of promoting the ends of other individuals or of society or some common good.¹⁷² What does it mean for individuals to be ends? Kant's principle requires further specification if it's going to serve as the basis for individual rights and their status. Nozick canvasses briefly a number of traits that could serve to ground rights as side constraints and also to specify further Kant's idea that individuals are ends. Rationality, free will, and moral agency, Nozick notes, all play an important role in making this notion clearer and in grounding side constraints. Nozick, however, does not believe these traits to be sufficient:

In conjunction, don't they add up to something whose significance is clear: a being able to formulate long-term plans for its life, able to consider and decide on the basis of abstract principles or considerations it formulates to itself and hence not merely the plaything of immediate stimuli, a being that limits its own behavior in accordance with some principles or picture it has of what an appropriate life is for itself and others... So let us add, as an additional feature, *the ability to regulate and guide its life in accordance with some overall conception it chooses to accept* (emphasis mine).¹⁷³

¹⁷²Nozick, pp. 30-32.

¹⁷³Nozick, p. 49.

Individuals are ends insofar as they are capable of choosing some overall plan for their lives and in pursuing that plan, and it is this capacity, in which rationality, free will, and moral agency all play an important role, that ultimately grounds individuals' rights. To treat individuals as ends, that is, as beings capable of forming and pursuing some conception of the good, is to recognize that they have rights that must be respected with, according to Nozick, the utmost stringency.¹⁷⁴

That individuals have such a capacity to shape their lives according to some plan may show that they have *some* rights (that demand respect), but it does not, by itself, tell us *what* rights individuals have. In the first chapter I identified one feature shared by liberal thinkers from different traditions, and that feature was a commitment to what I called the liberal ideal—the ideal of the autonomous or self-determining individual living a life of her choosing.¹⁷⁵ Up to this point Nozick has made clear only that individual rights are somehow connected to that ideal, but what remains unclear is the path from that ideal to the specific rights that Nozick takes individuals to have.

This is where self-ownership plays an important role in Nozick's theory and in libertarian theory more generally. Gerald Cohen distinguishes between two ways in which the connection between the liberal ideal of autonomy and self-ownership can be interpreted.¹⁷⁶ According to the

¹⁷⁴Ralf Bader interprets the connection that Nozick draws between these ideas in a similar way: "By respecting their rights, we respect and adequately respond to the fact that people have the capacity to shape their lives and strive for meaning." *Robert Nozick*. London: Continuum, 2010, p. 24.

¹⁷⁵It is important to remember that I presented this liberal ideal of autonomy as a *framework* that includes a number of dimensions, rather than as some substantive ideal with a set of necessary features. In doing so, the point is to emphasize that all liberals covered throughout the dissertation are committed to this ideal, but their positions differ corresponding to the dimensions of the ideal that they think are of particular importance.

¹⁷⁶Cohen, Gerald. "Self-Ownership: Assessing the Thesis," in *Self-Ownership, Equality, and Freedom*: 229-244, p. 236. There may be another, third alternative as well. We may think that the liberal ideal is a separate, more fundamental principle and that self-ownership is a secondary principle necessary for the promotion of that ideal. There are several difficult obstacles that the libertarian would have overcome for this alternative to succeed. First, we would have to acquire some independent purchase on the ideal itself, only then could we proceed to make the argument that self-ownership is necessary. The second obstacle is that depending on how we add substance to the first principle, it may turn out that self-ownership is not sufficient or, even more problematically for the libertarian, that a thinner, non-libertarian conception of self-ownership is necessary. In other words, if the ideal is cashed out

first interpretation, self-ownership is a normative concept distinct from a *substantive* conception of autonomy and ought to operate in such a manner as to promote and maximize the autonomy of individuals. Cohen proceeds to launch an attack on self-ownership by showing that it fails to maximize (substantive) autonomy because of the scope of negative rights that it permits individuals. If autonomy denotes the range (and quality?) of choices open to individuals, then the state's attempt to promote autonomy by providing collective goods such as education and welfare through taxation programs would run afoul of and violate individuals' self-ownership. The problem with Cohen's argument in this case is that, as Eric Mack rightly points out, libertarianism is not theoretically committed to any substantive notion of autonomy. While the libertarian believes that its favored institutional regime will tend to promote the ability for individuals to exercise their autonomy, the libertarian "does not, therefore, make the thesis of self-ownership hostage to the claim that a regime of libertarian rights will (itself) guarantee maximum aggregate autonomy or reasonable autonomy for all."¹⁷⁷ Cohen's argument and the first interpretation beg the question against libertarianism by invoking a substantive conception of autonomy.

The second interpretation falls more in line with the position offered in this project and (for that reason) also avoids begging the question as does Cohen's argument.¹⁷⁸ According to the second interpretation, self-ownership describes *what it means* for an individual to live a life of her choosing. Like Rawls' conception of persons and Tomasi's conception of persons as self-

to reflect a substantive conception of autonomy, then the third interpretation merely reduces into Cohen's first interpretation and would be subject to his argument that libertarian self-ownership is flatly incompatible with a substantive conception of autonomy. In other words, the libertarian would have to define the ideal in a non-question-begging manner and then show that libertarian self-ownership is necessary and sufficient for its promotion. But under this interpretation, it at least remains an open question as to how that ideal is defined.

¹⁷⁷Mack, Erick. "Self-Ownership, Marxism, and Egalitarianism," *Politics, Philosophy, & Economics*. 1(2)2002: 237-276, p. 265.

¹⁷⁸This is, in fact, part of the reason why I have opted in favor of presenting the liberal ideal of autonomy as a framework comprising a number of dimensions rather than as a substantive ideal composed of necessary elements.

authors, self-ownership describes what it means for an individual to live a life of her choosing by discarding and ignoring some dimensions that form part of the framework of the liberal ideal, as outlined in the first chapter, in favor of other dimensions. However, unlike the conceptions of persons that we find within other liberal traditions, the libertarian conception of self-ownership is, as we will see, more robust and thickly defined insofar as it includes certain rights within its very definition rather than attempting to derive those rights from a thinner conception of persons. This is an important point because it affects the sorts of arguments that can be offered for the thesis of this chapter. In the previous chapters each argument proceeded directly from the conceptions of persons to demonstrate the possibility of deriving contradictory conclusions in regards to the status of the capitalist economic liberties, and in the next section I will explain what is problematic with an argument that attempts a similar sort of maneuver in the context of self-ownership and inequality. Doing so will hopefully clarify further why it is necessary, in order to avoid begging the question against the libertarian, for the argument to proceed at one level higher, in contrast to the arguments found in the previous chapters.

Explicit in the very term, then, libertarian self-ownership comprises a bundle of ownership rights that an individual possesses over herself. These ownership rights are akin, as Cohen illustrates, to those rights that an individual may hold over any external “object”:

Each person possesses over [her]self, as a matter of moral right, all those rights that a slaveholder has over a complete chattel slave as a matter of legal right, and [she] is entitled, morally speaking, to dispose over [her]self in the way such a slaveholder is entitled, legally speaking, to dispose over [her] slave...If I am the moral owner of myself, and, therefore, of this right arm, then, while others are entitled, because of *their* self-ownership, to prevent it from hitting them, no one is entitled, without my consent, to

press it into their own or anybody else's service, even when my failure to extend service voluntarily to others would be morally wrong.¹⁷⁹

Self-ownership consists of the most extensive set of ownership rights—*full ownership*, in other words—that an individual could possess over any object. These rights include, more specifically¹⁸⁰: (1) *control rights*: that is, both a liberty right to use it and a claim right to prevent others from using it, (2) *rights to compensation*, (3) *enforcement rights*, (4) *rights to transfer* any of these rights to others, and (5) *immunities to the non-consensual loss of these rights*.

A distinctive feature of full ownership rights is that they embody a negative conception of liberty. That is, the core essence of self-ownership rights are rights not to be hampered or interfered with in one's use of and employment (including transfers) of one's body, talents, capacities, and labor. These rights guarantee that control is left to the exclusive discretion of the individual. The other rights that compose the ideal—rights to compensation, enforcement rights, and immunities to the non-consensual loss of these rights—pertain to aspects of compensation only in instances of wrongful interference with owner control. Furthermore, what is conspicuously absent from the bundle of self-ownership rights are the sorts of rights that might guarantee individuals access to or provision of certain goods (such as education or healthcare) that make the development and exercise of talents, capacities, and labor possible. In this manner self-ownership provides a very explicit picture of which dimensions of the physical component of autonomy are of importance.¹⁸¹

¹⁷⁹Cohen, Gerald. "Self-Ownership, World-Ownership, and Equality" in *Self-Ownership, Freedom, and Equality*: 67-91, p. 68.

¹⁸⁰Vallentyne, Peter and van der Vossen, Bas, "Libertarianism", *The Stanford Encyclopedia of Philosophy* (Fall 2014 Edition), Edward N. Zalta (ed.), URL = <<https://plato.stanford.edu/archives/fall2014/entries/libertarianism/>>.

¹⁸¹As for the cognitive component of autonomy, besides Nozick's solitary remark that the individual not be the "plaything of immediate stimuli," there does not appear to be any evidence that Nozick requires anything nearing something as substantive as procedural independence in the formation of a life plan like that found in the conceptions of persons held by both Rawls and Mill.

There are two important consequences that follow from defining self-ownership exclusively in terms of negative liberty. The first consequence concerns the relation between the rights that comprise self-ownership and self-ownership's function as a descriptor of the liberal ideal. We saw that in chapter 2 Rawls justified many of the basic rights on his list because he thought that they played an important mediatory role in promoting conditions that allowed for the development and exercise of the two moral powers.¹⁸² Here, however, we may recall that according to the second interpretation self-ownership describes what it means for an individual to live a life of her own choosing. Now, because the libertarian construes self-ownership so thickly as a bundle of (negative) ownership rights meant to protect control and use from unwarranted outside interferences, what it means for an individual to live a life of her choosing is to exercise those control rights. That is, the rights and freedoms embedded within self-ownership are *constitutive* of the liberal ideal and are not indirectly valuable for promoting a distinctly separate goal.

A better understanding of this relation helps address a sort of objection raised against Nozick that is of particular relevance for my purposes. Samuel Scheffler attempts to derive a more robust set of rights from Nozick's own foundational apparatus. He thinks that a commitment to living a meaningful life—shaping a life in accordance with some overall plan—requires positive rights that guarantee access to some pre-specified set of resources.¹⁸³ Scheffler argues that a more robust set of rights ensures access to these resources and would, therefore, be

¹⁸²Liberty of conscience is constitutive of an individual's exercise of the moral power to form a life plan insofar as Rawls includes as an ingredient of an individual's determinate conception of the good recognition of the fact that one was responsible for determining one's conception of the good.

¹⁸³Scheffler, Samuel. "Natural Rights, Equality, and the Minimal State," in *Reading Nozick*. Ed. by Jeffrey Paul. New Jersey: Rowman and Littlefield, 1981, 148-168. In addition to misconstruing the role of rights in the ideal, Scheffler also misinterprets Nozick's position more generally. Nozick does not attempt to derive rights from the idea of "living a meaningful life." Nozick, instead, introduces the latter idea as an explanation for *why* the liberal ideal—an individual living her own life—may be of value, and not, as Scheffler and others have contended, as the basis for rights. Whereas other liberals take the liberal ideal as axiomatic, and therefore, not in need of justification, Nozick offers here a(n) (admittedly) half-hearted, speculative justification for why that ideal is so important.

more consistent with the moral basis that has garnered Nozick's own support. A proper understanding of the relation between the rights and the ideal allows us to identify more easily the error in Scheffler's argument: the problem with his argument is that he misconstrues the nature of the connection between these two ideas. According to his argument the individual possesses some positive claim right to be provided with some goods important for the exercise of self-ownership. However, as we have seen, the most important ownership rights that comprise self-ownership are primarily negative rights, and the bundle of rights as a whole is not meant to play an *instrumental* role in promoting the development and exercise of self-ownership. It is not the case that an individual's decision to use her talent in some way for some end brings about circumstances conducive to the exercise of her self-ownership, as if self-ownership were conceptually distinct from the use of her talent. Rather, the exercise of those rights—including her decision as to how to use her talent—is tantamount to the exercise of self-ownership so that to interfere with an individual's choices in such matters would be not only to violate her rights but the very exercise of her self-ownership. Scheffler's argument fails to show, then, that Nozick's own moral foundation paves the way to a broader set of rights because that foundation does not depend on an instrumental explanation of rights.¹⁸⁴

The second important consequence concerns the status of the ownership rights that form part of self-ownership. Because these rights are constitutive of self-ownership, any proposed interference with their exercise would be equivalent to a violation of self-ownership. As a result, these rights pose such stringent constraints on legitimate state activity that Nozick rejects any form of institutional apparatus that would attempt to provide resources to one group of citizens by extracting those resources from another group as doing so would violate the self-ownership of

¹⁸⁴Bader similarly points out in response to Scheffler's argument that "It is not the case that living a meaningful life is the goal that is to be achieved and that rights are the means that permit us to attain this goal," p. 79.

members of the latter group. The libertarian state thus abstains from redistributive taxation, regulation of market activity such as setting minimum wage laws, antitrust laws, enforcing sanitary working conditions, welfare programs, and the provision of public goods through the state apparatus. In addition to rejecting these programs typically furnished out of a concern for social justice, the libertarian state is further obliged to enforce all voluntary transactions conducted by individuals, even those transactions in which one individual contracts into terms of slavery and abnegates all future uses of her self-ownership or those contracts entered into despite severe disparities in bargaining power and the circumstances of the transacting parties. The fact that self-ownership rights impose such significant constraints on legitimate state activity makes it imperative to determine how those rights are specified in the first place. I will discuss these points in greater detail in the following section.

4.2 Self-Ownership Rights as Basic Rights

4.2.1 Consent and Self-Ownership

There have been a number of attempts, both by those working within a libertarian framework and those operating outside it, to temper some of the harsher implications (see above) that follow from the libertarianism espoused by Nozick and his followers. Some of this work has been developed by a number of independent philosophers and has culminated in a theoretically sophisticated network of views now known under the moniker of “left-libertarianism.” Left-libertarianism attempts to mollify many of the troubling outcomes generated by right-libertarianism by combining a commitment to self-ownership with a commitment to a more egalitarian distribution of raw, natural resources. Left-libertarians forge this connection by positing a claim right on the part of all individuals to an equal division of natural resources in the world, and this claim right functions within the theory as a constraining force on initial

appropriation. So where for the right-libertarian the contingent distribution of property that arises out of the exercise of self-ownership trumps all other concerns of justice, for the left-libertarian the claim right to an equal division of natural resources moderates the exercise of self-ownership in appropriation and the subsequent establishment of property rights over natural resources. Whether these two commitments can be combined to form a coherent theory is still open to dispute.¹⁸⁵

In addition to departing from traditional, right-libertarianism by positing a claim right to natural resources, left-libertarians are unclear among themselves as to what conception of self-ownership serves as the bedrock for their respective political theories. Some left-libertarians hold a conception closer to the right-libertarian version in which self-ownership emphasizes a negative conception of liberty, whereas others attach self-ownership to a substantive notion of autonomy. In an excellent article that highlights the high level of indeterminacy inherent within the concept, Barbara Fried points out that “Given their [left-libertarians] disagreement about the meaning of self-ownership, it is hardly surprising that left-libertarians cannot agree on how self-ownership gets cashed out at the level of property rights.” And even when there is agreement at the foundational level, many left-libertarians still draw out different policy implications, which suggests that “left-libertarians, like those on the right, are pulling out some very thick conclusions out of some very thin premises, giving them the latitude to find in “self-ownership” whatever they were looking for.”¹⁸⁶ Left-libertarians thus depart in significant ways from right-libertarians insofar as they introduce additional premises that a right-libertarian would not accept

¹⁸⁵Cohen, for example, argues that a commitment to self-ownership cannot be combined with a commitment to an equal right over natural resources as the assertion of either commitment will tend to produce a conflict with the other. See his chapter, “Self-Ownership, World-Ownership, and Equality,” pp. 67-91 in *Self-Ownership, Equality, and Freedom*. See also the article by Richard Arneson, “Self-Ownership and World-Ownership: Against Left-Libertarianism,” *Social Philosophy and Policy*. 27(2010): 168-194.

¹⁸⁶Fried, Barbara. “Left-Libertarianism: A Review Essay,” *Philosophy and Public Affairs*. 32(1)2004: 66-92, p. 78.

because they couch their conceptions of self-ownership within a broader normative framework that attaches priority to other values. For these and other reasons the arguments in this chapter should be taken to apply only to right-libertarianism, although it may turn out, somewhat fortuitously, that in some instances they will apply equally to the views of some left-libertarians as well.

Others have attempted to argue, without needing to introduce a claim right to natural resources, that a libertarian¹⁸⁷ conception of self-ownership disallows large degrees of economic inequality as it not only licenses redistributive taxation but actually turns out to require some form of redistributive taxation. In the following pages I consider an argument put forward by Serena Olsaretti who argues that an independent notion of voluntariness is central to understanding self-ownership, which, once defined so as to include her notion of voluntariness, will license more state intrusion in individual life in the form of redistributive taxation in order to ensure that all individuals are faced with acceptable options by which to exercise their self-ownership. My aim in rejecting her argument is to show that libertarians attach such a strong degree of stringency to the rights that compose self-ownership—the rights take on a status equivalent to basic rights enshrined in the national constitution—in which any interference with those rights must overcome a nearly insurmountable degree of legislative and judicial scrutiny that precludes the possibility of enumerating a compossible set of rights in which one of those rights is a positive claim right to a basic minimum of resources that requires repeated and continual interference with the negative rights central to self-ownership. The upshot of this point is that any potential arguments presented against the libertarian must show either that the libertarian has good internal reasons for rejecting self-ownership altogether or that it is impossible to avoid the indeterminacy inherent within the concept when it comes to establishing

¹⁸⁷For the rest of the paper by “libertarian” I refer only to right-libertarianism.

what sorts of rights to include under its purview in the first place. I will take up the second strategy in the third section of the paper.

In turning now to Olsaretti's argument, the basis of her argument is the claim that choice and consent form integral parts of self-ownership.¹⁸⁸ She is correct to draw our attention to the role that these ideas play in the exercise of self-ownership. Nozick's argument that redistributive taxation violates self-ownership does not depend, as some have mistakenly thought, on the claim that redistributive taxation violates a right to the market value of our labor—a right which some take to follow by extension from self-ownership. Instead, Nozick thinks that redistributive taxation violates self-ownership and turns out to be equivalent to forced labor because individuals have not consented to taxation; taxing their labor (for redistribution of income) uses their labor for purposes that they have not consented to, which is to make others, in effect, partial owners of those individuals.¹⁸⁹ A consequence of Nozick's argument against redistributive taxation is that non-consensual use of property—in this case the individual's labor—operates as a sufficient condition for a violation of an owner's property right and a violation of self-ownership. The heavy emphasis on consent makes sense when one remembers that the

¹⁸⁸“Libertarians and non-libertarians alike provide statements of self-ownership which explicate the latter in terms of being able to make free or voluntary choices, or not being forced to choose how to use one's mind and body,” p. 50 in her article, “Rescuing Justice and Equality from Libertarianism,” *Economics and Philosophy*. 29(2013): 43-63.

¹⁸⁹Nozick writes, “Seizing the results of someone's labor is equivalent to seizing hours from him and directing him to carry on various activities. If people force you to do certain work, or unrewarded work, for a certain period of time, they decide what you are to do and what purposes your work is to serve apart from your decisions. This process whereby they take this decision from you makes them a *part-owner* of you; it gives them a property right in you,” *Anarchy, State, and Utopia*, p. 172. It is a separate but interesting question of whether Nozick thinks that self-ownership does include a right to the market value of one's labor. On the one hand, his entitlement theory depends at its very foundation on the idea that individuals have a right to the full value of what their labor secures in the state of the nature. Does a right to the market value of their labor simply follow from the principle of initial acquisition (which in itself depends on how labor creates such rights in external objects, which Nozick never explicates)? Barbara Fried argues that Nozick establishes the right to the market value of labor through market exchanges because the latter are *voluntary*, but this would be, according to her, to beg the question as to whether individuals have such a right, as this right has to be determined prior to any market exchanges. See her paper “Wilt Chamberlain Revisited: Nozick's ‘Justice in Transfer’ and the Problem of Market-Based Distributions,” *Philosophy and Public Affairs*. 24(1995): 226-245.

foundational component, and what is presupposed by most of the other components of (self-)ownership, is the exclusive freedom to choose how to use an object.¹⁹⁰

The important question here really turns on the scope assigned to determining under what circumstances an individual can aptly be described as consenting or freely choosing to use her property. The libertarian construes the consent-inhibiting conditions narrowly to include only such things as direct interference exerted by other individuals or the state. In order for Olsaretti's argument to be successful, she must show that the Nozickean libertarian is impelled, whether because of consistency, to avoid charges of circularity, or some other internal problem, to adopt an account of consent that incorporates a broader understanding and evaluation of the consent-inhibiting conditions—one that is sensitive in particular to the ways in which a lack of material resources can impair the exercise of consent.

To see why, consider Nozick's response to the following example. Nozick envisions a situation in which twenty-six women and twenty-six men each desire to be married, and the first woman and man are each the most preferred partner by all others, and the second woman and man are the second most preferred, and so on, all the way down to the final woman and man who are each considered to be the least desirable marriage partners. If in each case the most preferable options available choose to marry each other, this "contraction of options" will reach a point where the last woman and man have no choice but to marry each other if they want to marry at all. Is their choice to marry voluntary? According to Nozick, it is: "The fact that their only other alternative is (in their view) much worse, and the fact that others chose to exercise their rights in certain ways, thereby shaping the external environment of options in which [they]

¹⁹⁰Nozick reiterates this point: "The central core of the notion of a property right in X, relative to which other parts of the notion are to be explained, is the right to determine what shall be done with X; the right to choose which of the constrained set of options concerning X shall be realized or attempted," *Anarchy, State, and Utopia*, p. 171.

choose, does not mean they did not marry voluntarily.”¹⁹¹ Nozick believes this example to be analogous to market exchanges between a worker and an owner of capital where the worker must choose, voluntarily, either to sell her labor power to the capitalist or starve. His hard-grained position on voluntariness also implies that the capitalist economic liberty to labor—the freedom to choose how to use labor and the terms of its use—is voluntary despite significant disparities in bargaining power that typically exists in contract negotiations between employer and employee. Workers who accept wages below market levels or who contract to work under hazardous conditions do so voluntarily, as the employer has the right to run her business how she chooses, and this right functions to constrain the set of options open to the worker. We can see then that Nozick does not take the unpalatableness of available options by itself as a consent-inhibiting condition, *as long as* others acted within their rights in bringing about those circumstances.¹⁹²

Olsaretti claims that Nozick’s rights-based conception of what constitutes a consent-inhibiting condition is viciously circular. Because choice and consent are constitutive of the exercise of self-ownership, “libertarians need a conception of voluntariness that is defined independently of self-ownership, *since it is needed to define self-ownership* (emphasis original).”¹⁹³ The “core” property right that comprises self-ownership—the right to use one’s property—is dependent on the assumption that the property owner makes a *voluntary decision* in determining how to use her property. According to Olsaretti then, Nozick needs an independent, non-rights based account of what it means to make a voluntary choice in order to describe what it means for individuals to exercise their property rights at all.

¹⁹¹Nozick, p. 263.

¹⁹²Nozick states further, “A person’s choice among differing degrees of unpalatable alternatives is not rendered nonvoluntary by the fact that others voluntarily chose and acted within their rights in a way that did not provide [her] with a more palatable alternative,” pp. 263-264.

¹⁹³Olsaretti, p. 50.

Olsaretti proceeds to canvass two separate conceptions of voluntariness and explains what on each account constitutes a consent-inhibiting condition. On the first account, what is voluntary is identical to the volitional so that the consent-inhibiting conditions are understood more narrowly, just as one would typically expect of libertarianism, as including only instances of physical force. She claims that the libertarian must reject this first account of voluntariness on grounds that it fails to accommodate the intuition that coercive acts interfere with self-ownership and must, instead, adopt a more robust account of voluntariness in which the unacceptability of options affects judgments of voluntariness. But on this second conception it is not simply the unacceptability of options that undermines consent, for an individual may have been responsible herself for bringing about those options. Olsaretti avoids construing the consent-inhibiting conditions this broadly. Rather, under this second view, “an action would *only* count as non-voluntary in the self-ownership-affecting sense if the ineligible options agents wanted to escape were brought about *intentionally* by other agents (emphasis mine).”¹⁹⁴ Olsaretti in effect appeals to what she refers to as a “non-relational” account of force that expands the consent-inhibiting conditions to include considerations relevant to the genesis of unacceptable options. In other words, what undermines voluntariness on this second account is when one agent intentionally brings about an objectively bad set of options—without the exercise of physical force—where the second individual has no choice but to acquiesce to the first agent’s offer because the alternative is even worse. She illustrates this point with the following example:

“You may not be forcing me to work for you for a miserly wage in exchange for rescuing me from drowning in a freezing river; but the fact that I am forced to work for you seems enough to render the ensuing relationship between you and me as one in which my standing as a self-owner is undermined.”

¹⁹⁴ Olsaretti, p. 52.

Olsaretti concludes, albeit with far too much haste, that redistributive taxation is necessary in order to provide all individuals with a basic minimum of material resources for the exercise of their self-ownership, as a basic minimum ensures that individuals do not face unacceptable options that undermine their consent and self-ownership.¹⁹⁵

There are two main responses that I want to make. If we return to Nozick's argument, we saw that he does not take the unacceptability of available options as sufficient for impairing the voluntariness of choices in those scenarios. What is relevant in making such a judgment is whether individuals acted within their rights: if others had a right to act (whether intentionally or not seems irrelevant) as they did, then, according to Nozick, the corresponding set of options is legitimate, even if undesirable by the lights of the individual who must choose among those options. Despite Olsaretti's claim to the contrary, the coercion case is not a problem for Nozick's account as the coercer lacks the right to act in such a way as to limit the options of the coerced individual by threatening the use of force to acquire what does not rightfully belong to her. We do not need a separate justification to explain why the coercer cannot *threaten* the use of force when the coercer has no right to use force in those circumstances.¹⁹⁶ As a result, the libertarian

¹⁹⁵The introduction of the motivational constraint as a necessary condition—that other agents intentionally brought about the unacceptable options—seems to me to weaken the role that the non-relational account of force plays in her argument. In Nozick's marriage example, as in probably most cases except those of coercion, the most desirable marriage partners surely do not intend to create an unacceptable set of options for the least desirable by selecting the most desirable options open to them; the outcome is rather an unfortunate consequence of their choices.

Furthermore, her haste in jumping to the conclusion that redistributive taxation is required is a consequence of losing sight of the forest for the trees. That is, she focuses on bilateral, one-off "transactions" where it is at least in principle easier to identify agential motivations compared to arguing that, within a market economy where there are a number of anonymous transactions, the position of those with unacceptable alternatives is a direct consequence of the actions of agents explicitly intending to impose unacceptable options, which is what she needs to show in order to prove that redistributive taxation is justified. I return to this point below.

Her argument—especially the example she provides—seems to be based more on exploitation—where both parties benefit from the transaction but the exploiter benefits unfairly—rather than on coercion—where the coerced individual does not benefit at all from the transaction.

¹⁹⁶On this point, see Barbara Fried, *The Progressive Assault on Laissez Faire: Robert Hale and the First Law and Economics Movement*. Cambridge, MA: Harvard University Press, 2001, p. 69. This seems to me to be consistent

need not abandon the first conception of voluntariness in favor of the second, more expansive conception.

An additional problem with her argument is that the non-relational account of force that she appeals to is precisely what is at stake here in determining what qualifies as a consent-inhibiting condition in the first place. She provides no argument as to why a libertarian must accept a non-relational account of force (as she construes it) as a consent-inhibiting condition, unless we interpret her claim that the first conception of voluntariness—where the only consent-inhibiting condition is physical force—is insufficient because it cannot handle cases of coercion, *as an argument for* the second conception of voluntariness. But there are two problems that make this interpretation unviable for her purposes. (1) Nozick’s framework already handles adequately coercive cases. (2) If it turns out that I am simply incorrect about the first point, this interpretation could serve, at most, only as a reason for *rejecting* the first conception of voluntariness and not as a reason for *adopting* the second conception of voluntariness that she favors. She wrongly assumes that the libertarian must simply accept the second conception in light of the “issues” confronting the first, as if the two conceptions were exhaustive. But precisely because the two conceptions of voluntariness that she provides are not exhaustive, the burden remains on her to provide a positive argument for why the libertarian must accept a non-relational account of force that expands the consent-inhibiting conditions in such a specific way. So, even if it turns out that she is correct in claiming that voluntariness must be defined

with what Nozick says elsewhere on coercion: “When a person does something because of threats, the will of another person is operating or predominant...a person who does something because of threats does not perform a fully voluntary action...when he does something because of threats it is not his own choice but someone else’s...” in “Coercion,” *Socratic Puzzles*. Cambridge, MA: Harvard University Press, 1997, p. 38. Threats, therefore, are not disparate action types but are violations of self-ownership just as instances of physical force are. This is not to say that Nozick’s account is problem free. Consider the following problem: what are we to say in cases where individuals exercise their *rights* as *threats* if such cases are possible? Is the subsequent decision by the threatened individual voluntary or not? And if involuntary, what else can we conclude from that?

independently of self-ownership, the libertarian need not incorporate a non-relational account of force as part of the consent-inhibiting conditions, at least without further argument on her part. In response to her argument then, it's unclear, first, why the libertarian must abandon the first conception of voluntariness at all, and second, it's also unclear why in moving to a more robust conception of voluntariness, the libertarian is impelled to accept as a consent-inhibiting condition a non-relational account of force.

4.2.2 Self-Ownership Rights as Basic Rights

One theme presented throughout the chapter is that many left-leaning philosophers have attempted to argue that a libertarian conception of self-ownership is highly pliable and therefore consistent with more positive rights, redistributive taxation, and more broadly egalitarian conclusions. In making such arguments, however, they often implicitly rely on introducing premises external to the libertarian framework and thereby undermine their supposed internal critiques of libertarianism and, as a result, diminish the persuasiveness of their conclusions. This is a result of ignoring the two salient features highlighted in the first section of the chapter: that the libertarian *defines* self-ownership so thickly in terms of negative rights; and secondly, that these negative rights take on such a stringent status. I want now to return to this second conspicuous feature of self-ownership.

Let us assume for the moment that Olsaretti is correct in asserting that the libertarian is compelled by internal reasons to adopt the second, more robust conception of voluntariness where a non-relational account of force counts as a consent-inhibiting condition. What follows, according to her, is the implementation of a basic minimum licensed through redistributive taxation that ensures individuals do not face unacceptable options. Now, she admits that the

implementation of a basic minimum financed through redistributive taxation would indeed interfere with the self-ownership of other individuals; however, such interference

“would, morally speaking, be analogous to the interference with individuals exercised in order to prevent people from assaulting or maiming others. In both cases, the interference in question is necessary to protect everybody’s self-ownership rights equally, and sets the parameters within which each person’s self-ownership rights extend.”¹⁹⁷

It is noteworthy that Olsaretti considers the two sorts of interferences with self-ownership to be on par, morally speaking. Initially they appear to be of different kinds, but her argument levels any differences between the two by describing both simply as external interferences that inhibit an individual from choosing how to use her property. Her argument treats the two as morally equivalent likely in virtue of her claim that agents have *intentionally* brought about the set of unacceptable options faced by others, which is then perceived to be analogous to cases in which agents have intentionally physically harmed others.

Besides failing to show that all agents who benefit in a market economy intentionally aim to impose unacceptable options on those who benefit less and occupy the lower rungs of the socioeconomic ladder, many state policies such as taxation apply indiscriminately to all individuals—whether or not they either greatly benefit from the market economy or intentionally bring about unacceptable options for others. Without any precise methods for ensuring that redistributive taxes are imposed only on those who have violated the self-ownership of others by intentionally creating unacceptable options, any feasible implementation of a tax system will have to adopt a structure so roughly and broadly contoured that it would apply indiscriminately

¹⁹⁷Olsaretti, p. 53.

to many individuals innocent of her accusation.¹⁹⁸ But this means that many of these individuals who fall haplessly under its burden will have their self-ownership violated expressly for the purpose of benefiting others. And this, of course, is not analogous to a scenario in which one individual's ostensible freedom is limited to prevent her from physically harming another. What we have instead is simply a system extended to incorporate consequentialist considerations germane to the maximization of self-ownership. This conception of rights, which is implied by Olsaretti's argument, ignores the stringent status attached to self-ownership rights that forbids these sorts of trade-offs from occurring.

The absolute status that Nozick attaches to self-ownership rights excludes the possibility of construing self-ownership as a compossible set of rights that includes both negative rights protecting individuals from interference and positive rights¹⁹⁹ ensuring that individuals have access to material resources. As we have seen, to include both types of rights would require continual interference with the rights of some individuals (the very things they were meant to be protected from) for the sake of preserving the rights of other individuals. One might think that this is an inescapable and particularly acute problem facing any potential scheme of rights. Such a thought is both right and wrong in this case. The inclination is correct in the sense that for any conception of rights there is a need for some mechanism to help adjudicate the inevitable conflicts that come about when individuals desire to exercise their rights in antagonistic ways, and this issue is no less pertinent under Nozick's system, as compared to other political theories, when individuals will desire to exercise their property rights in incompatible ways.

¹⁹⁸It's not clear that this is only an epistemic problem endemic to non-ideal theory. Again, unless it's possible in principle to identify those agents who intentionally impose unacceptable options on others in a market economy, then her argument fails to get off the ground.

¹⁹⁹It is immaterial for the substantive point that I make here if we describe the compossible set of rights as including negative rights and positive rights to material resources or as merely including only negative rights where "interference" is broadly construed to include absence of material resources and other external impediments in addition to physical force.

Nozick's response to cases of conflict is to deny that there is any conflict. That is, because he treats material resources within the world already attached to claims of entitlement on the part of certain individuals, those entitlements function to shape the way in which other individuals can legitimately exercise their property rights so that there is no conflict between rights. In cases of trespass, for example, there is no conflict between one individual's exercise of her property right to use her body in walking across a tract of land versus another individual's property in ownership over the land and subsequent decision to forbid travel through it. The time-order formation of the entitlements determines who possesses the property right to the land and who lacks it. If the land owner established his right to the land first, then the individual is simply not free to walk across it without his permission; if on the other hand, she occupied the space first, the potential land owner cannot come and stake a claim to the very spot on which she stands and then complain that she trespasses.²⁰⁰ In the end, then, there is no conflict between the exercise of property rights under Nozick's account insofar as the extant structure of property rights and entitlements determines the legitimate ways in which other individuals can exercise their property rights in the first place.²⁰¹

²⁰⁰I am not sure what Nozick would say about the area of land immediately surrounding the space on which she stands. Is the potential land owner free to stake a claim to that land thereby preventing her from moving about? Things also become more complicated when we introduce Nozick's "cross and compensate" conception of rights where individuals are free to violate the rights of others on the condition that they provide compensation for doing so. With the introduction of this model, the obligation to compensate the land owner creates an additional burden for the individual crossing the land had the land owner not staked a claim to the immediate surrounding area. However, I do not think that the possibility for extortion arises in this case, insofar as the potential trespasser is obliged to compensate the potential land owner only to the extent of making him indifferent between violation and non-violation. He does not, in other words, gain any surplus from the violation of his right that would make it worthwhile for him to attempt to extort, or even threaten, the potential trespasser by staking an entitlement to the land immediately surrounding her preventing her from moving about. Nozick may insist that the landowner's appropriation of the land immediately surrounding her violates his version of the Lockean proviso by making her worse off compared to the baseline of her having the liberty to walk through the land. For more on these issues, see *Anarchy, State, and Utopia*, chapter 4.

²⁰¹We may nonetheless persist in thinking that the state plays an important and indispensable role in delineating what counts as a legitimate use of property in the first place. For example, the state may deny that the individual can claim ownership to restrict movement altogether or charge a toll over a tract of land that serves as the only means of access to some vital resource. Robert Hale argued that the state thus plays an indispensable role in the

It is not, however, *this* sort of problem—where individuals desire to use their property in conflicting ways—that follows as a consequence from Olsaretti’s argument, despite her insistence that violations of self-ownership in the form of physical harm are morally equivalent to “violations” of self-ownership stemming from an absence of material resources. As we saw previously, it will turn out due to limitations that state-implemented policies such as taxation will apply indiscriminately to individuals, and this sort of situation is equivalent, not to individuals desiring to exercise their property in conflicting ways, but to interfering with the self-ownership of some members within society for the purpose of benefiting other members within society. The adjudication that must take place here is not between *conflicting* uses of negative property rights but rather a balancing act between the negative rights of some and the positive rights of others, which introduces the sort of consequentialist considerations that Nozick expressly sought to exclude from his account by attaching (nearly) absolute status to the negative rights that comprise self-ownership.²⁰² According to Nozick, the (nearly) absolute status possessed by those negative rights reflects

“the fact of our separate existences. They reflect the fact that no moral balancing act can take place among us; there is no moral outweighing of one of our lives by others so as to lead to a greater overall social good. There is no justified sacrifice of some of us for others.”²⁰³

If the near absolute status possessed by the negative rights are meant to reflect this fact, then introducing positive rights and any sort of consequentialist calculation that permits such violations, *when there is no conflict between the exercise of negative and positive rights*, only

structure of property rights and adjudicating the conflicts that their exercise inevitably produces. Fried, *The Progressive Assault*, pp. 100-106.

²⁰² Nozick, *Anarchy, State, and Utopia*, pp. 30-35.

²⁰³ Nozick, *Anarchy, State, and Utopia*, p. 33.

undermines the very justification of those negative rights. Self-ownership rights are best understood as taking on the status of basic rights for Nozick and are not to be violated either for the purpose of promoting some social good or for ensuring others' opportunities to exercise those rights among a set of acceptable options.²⁰⁴ The stringent status of self-ownership rights and basic rights more generally forbid these sorts of trade-offs from occurring.

There are a number of different domains in which individuals can exercise the control rights constitutive of self-ownership. While most of these domains are not directly related to economic activity, the areas that harbor the most common disputes over permissible state interference are indeed germane to individual activity in the economic sector. Because self-ownership is defined in terms of full ownership under the libertarian framework, the capitalist economic liberties represent one domain of the control rights that constitute self-ownership. The liberties to choose how to use one's labor, how to run a business, under what terms to engage in market transactions, and for what purposes to utilize productive and natural resources all represent instances of individual self-ownership. It follows then that state interference with any of these activities through market regulations, collective ownership of the means of production, price controls, minimum wage and working-condition laws all represent violations of self-ownership.

The entire domain of rights, which includes nothing more than self-ownership rights for libertarians, takes on the status of basic rights, and this limits considerably the functional apparatus of the state to nothing that extends beyond the minimal state. The effect of this

²⁰⁴ I read Nozick's understanding of self-ownership rights in the same way that Rawls understands his list of basic rights. According to Rawls, basic rights are to be limited only when they conflict with the exercise of other basic rights. It is thus difficult to devise a compossible set of positive rights and negative rights, particularly on Nozick's account which gives such wide play for negative property rights, that justifies violating the negative rights of some for the positive rights of others when the exercise of those negative rights does not directly conflict with the exercise of those positive rights. And any attempt to find room by expanding the notion of "conflict" would probably, it seems to me, undermine the very point of having *basic* rights (or perhaps even rights) in the first place.

transformation in the domain of rights contributes to magnifying the importance of determining, in the first place, whether self-ownership must be explicated in terms of full ownership or something less. For if self-ownership and full ownership are not connected in the way that libertarians claim, then the domain of basic rights diminishes considerably and the range of legitimate state interference increases inversely. In the following section I turn, finally, to this question.

4.3 The Liberal Dilemma: The Second Horn

Throughout the preceding I have emphasized the idea that self-ownership rights possess the sort of status equivalent to basic rights, which precludes consequentialist reasons from justifying their violation. It is this point in particular that makes self-ownership, as the libertarian construes it, incompatible with the usual bevy of social programs and redistributive policies that tends to draw support from progressives. In addition to these sorts of arguments, other philosophers such as Barbara Fried and Alan Ryan have argued for slightly more modest conclusions by pressing the charge that self-ownership is woefully indeterminate when it comes to specifying in detail both a system of property and, consequently, the range of permissible actions open to individuals.²⁰⁵ While Fried questions some of the implications that follow from self-ownership when it is defined in terms of full ownership, Ryan's comments strike more to the heart of the issue when he notes that it is only when self-ownership is taken on the assumption to mean full ownership that it supports a single political theory, and to make such an assumption is to "beg every serious question at issue." To grant the libertarian without argument that self-ownership means full ownership is to be needlessly concessive, and an overly placatory position by opponents is all the more problematic when it allows the libertarian to generate her desired

²⁰⁵Fried, "Left-Libertarianism," pp. 78-79; Ryan, Alan. "Self-Ownership, Autonomy, and Property Rights," *Social Philosophy and Policy*. 11(2)1994: 247-249.

conclusions so easily, despite whatever instances of indeterminacy that may arise at marginal cases. For this reason it becomes imperative to question the connection between self-ownership and full ownership at the *pre-political level*, before it operates to determine the structure that the state will take. The two arguments presented in this section are meant to undermine any confidence in the idea that self-ownership can be filled in with the sort of substantive content necessary for it to play the role that libertarians have assigned it as part of the constructivist method which has gained so much momentum in liberal political philosophy in the last several decades and which serves as the central theme of the dissertation.

4.3.1 Property and Intuitions in the State of Nature

One of Nozick's aims in *Anarchy, State, and Utopia* is to answer the anarchist by showing that the state is both necessary and would develop from the state of nature without the violation of individual rights in morally problematic ways. The point of departure for his discussion is distinctively non-political: the state of nature represents a pre-political domain embedded within a background of moral values and prohibitions that limit not only how individuals may act towards one another, but which also limit both the extent to which individuals can act in establishing the state as well as the very operational structure and scope of the state itself.²⁰⁶ Thus, according to Nozick, we start from a non-political situation and show how a political situation develops from it. It is in this case the moral theory operating in the background that accomplishes most of the work in establishing the broad features, and likely the details, of the state. It is surprising then, that Nozick did not spend more time in delineating the details and foundations of the moral theory operating in the background of the state of nature.

Instead of doing so, he simply adopts for the most part Locke's characterization of the state of nature. One important departure that Nozick makes from the Lockean position is to

²⁰⁶Nozick, *Anarchy, State, and Utopia*, p. 6.

abandon the theological premises that Locke connected to the law of the nature, in favor of a more secularized and Kantian foundation. But Nozick does, as we have seen, embrace the idea of self-ownership. As I made clear in the first section, Locke's conception of self-ownership differs markedly from how Nozick and contemporary libertarians understand it. For Locke self-ownership applied to the metaphysical entity of the person, as opposed to our bodies, and it attributed at most ownership to our actions. Couched within a theological framework, Locke expressly denied that we possessed creator rights over our bodies that granted us the freedom to do whatever we pleased with them. The contemporary libertarian, in contrast, construes self-ownership explicitly in terms of property rights that do not differ qualitatively from those property rights that may be acquired over any other external object in the world; from the libertarian perspective ownership over my body signifies the exact same property relation that I have over my television or toaster.

In an early and short paper on *Anarchy, State, and Utopia*, Bernard Williams offered scant morsels of concern over the viability of deriving the state by appealing to moral ideas that do not raise at the same time the specter of the political for support.²⁰⁷ Williams' point is particularly applicable when extended to the institution of property. Many historical and contemporary philosophers have routinely emphasized that the institution of property is at bottom conventional: it depends on the state apparatus for specifying the features and legitimate uses of ownership. In contrast to this view, one might defend a natural right to property by arguing that ownership consists merely of a bundle of rights with corresponding obligations, and insofar as other moral rights exist independently of the state without any conceptual difficulty, then a right to property can similarly exist independently of the state. But the issue that confronts

²⁰⁷Williams, Bernard. "The Minimal State," in *Reading Nozick*. Ed. by Jeffrey Paul. New Jersey: Rowman and Littlefield, 1981, 27-36, pp. 27-28.

Nozick here is how to determine, without the state, *which* bundle of ownership rights individuals possess, the scope of those rights, and their status. Are these questions that can be answered within the state of nature with no recourse to the political?

The discussion of moral rights in chapter 1 showed that the possession of some moral right y was connected often in some ambiguous manner to the possession of some attribute x possessed by beings in the world. The least problematic example is the connection between life or sentience and the right to life. However, in moving up the hierarchy of moral status where the relevant attributes for grounding rights tend to focus on more abstract and complex capacities it becomes less and less clear what rights follow in light of those attributes and what the connection between the two exactly is. If the relevant attribute is, for example, the capacity to form and pursue a life plan, there is no self-evident or intuitive bundle of general rights that follows, let alone any specific bundle of ownership rights. With reference only to this capacity, it remains ambiguous as to what resources in the external world are available for private appropriation as opposed to collective or common ownership. For those that are available for private appropriation, there are lingering and persistent questions regarding the scope of control rights and legitimate uses. Does the capacity grant ownership rights to use resources in ways entirely unassociated to their life plans? Are individuals free to waste resources? In acquiring resources, must they ensure that there are “enough and as good” left for others?²⁰⁸ These are questions not easily answered simply by appeal to the capacity to form and pursue a life plan. In cases of ownership and property, we often depend on the state apparatus to regulate property and its

²⁰⁸There are, of course, additional questions regarding the conditions under which productive and natural resources are legitimately acquired for private use in the state of nature. But these issues have already been well documented in Locke’s case, and insofar as Nozick seemingly adopts Locke’s labor theory of acquisition, his entitlement theory inherits those difficulties as well.

legitimate uses based on judgments that incorporate a number of normative values including justice, liberty, the social good, and so on.

In response to the argument above an interlocutor may object that I have confounded ambiguities inherent in a system of ownership over productive and natural resources with the altogether disparate issue of a system of *self*-ownership. As the two are not the same, problems plaguing the former may turn out insignificant or irrelevant to the specification of the latter. This response seems to me correct, but it also trades on an intuition rejected by libertarians—that ownership over our bodies *is* qualitatively distinct compared to ownership over material resources found in the world. Because libertarians treat the two as qualitatively identical whatever conceptual issues that confront the system of property in the state of nature when it comes to the acquisition of natural resources will apply to identical instances of self-ownership.

Perhaps, on the other hand, libertarians build the broader system of ownership by starting with intuitions underlying ownership over the self. Depending on the nature of these intuitions, the specification of self-ownership may prove more tractable in the state nature, and the remaining features of the system of ownership can then be derived from the paradigm case of self-ownership. Libertarians tend to bridge ownership between the self and objects in the world by appealing to labor as a sort of moral conduit that transfers claims of full ownership from the self to material resources. I do not want to speculate here as to whether the exercise of labor is capable of generating and justifying claims of ownership to material resources in the state of nature, although some implications will follow by extension when it comes to determining the nature of self-ownership. Rather, my concern is whether our intuitions can generate claims of full ownership in the paradigm case of self-ownership in the state of nature.

Whatever intuitions we do have about self-ownership fail to imply anything near full ownership. The underlying ideas motivating the intuition that we have ownership over our bodies seem to depend on a practical or common-sense understanding of the metaphysical relation between the self and the body. On the one hand, it is both conceptually possible to separate the self from the body, and with only little reflection many of us readily accept the notion that the same self persists despite the fact that our bodies undergo changes through the natural process of aging or in an unnatural loss of limb. At the same time, what we know so far of our conscious experience, its limited duration and its reliance on the body for sensory perception, makes it no less difficult to take for granted that the self is, for all practical purposes and to the extent of our current knowledge, always connected to our bodies and dependent on it for nearly everything we do in our lives. From these points we are easily led to the intuitive conclusion that each individual's body is *his* or *her* body, and this fact is enough to preclude others from using it for their purposes, physically harming it, or sexually violating it. Many people thus find the idea of self-ownership to be intuitive in a fairly straight-forward manner.

Beyond this, intuitions concerning *what we should be allowed to do* with our bodies become less ubiquitous when compared to intuitions that *prohibit* others from doing things to or with our bodies. Libertarians appeal to the latter in order to justify the former, but I suspect that there are different, additional intuitions and assumptions at work when it comes to determining what individuals should be allowed to do with their bodies. Take as an obvious example that many people deny that ownership over our bodies implies the ability to sell ourselves into perpetual slavery to another individual. For those who find this action intuitively acceptable, my suspicion is that their intuitions are often shaped by other implicit assumptions, some of which rely on the presence of political institutions, conventions, and societal norms. We see this

contrast in the intuitions meant to ground self-ownership most clearly in the case of children: no one would deny that children are self-owners in the sense that others are prohibited from using, physically harming, or sexually violating their bodies, but many would deny that children are self-owners in the sense that they are allowed to do whatever they want with their bodies. What explains the difference here has nothing at all to do with ownership. Those who believe that self-ownership permits voluntary slavery believe that its permissibility applies only to individuals thought to be capable of understanding the repercussions of their decisions, that is, normal “adult” human beings. Of course, specifying qualifications for entry into adulthood and the accordant intuitions that would make such actions permissible both rely on largely arbitrary distinctions made by the law. Now while the Nozickean libertarian does not have the privilege of relying on distinctions made by the law, he or she may nonetheless appeal directly to the properties that the law is meant to elucidate for practical purposes. That is, if the law that specifies adulthood is meant to reflect or roughly approximate some empirical fact regarding cognitive development, then libertarians could appeal to this empirical fact in order to generate or defend intuitions that make actions like voluntary slavery permissible. And this is precisely the problem: intuitions about self-ownership are not performing the conceptual work, or at least not primarily, in grounding the permissibility of voluntary slavery; what is doing the conceptual work in this case are intuitions and beliefs about cognitive development and the respect owed towards individuals who possess the appropriate cognitive faculties. Furthermore, a principled approach by libertarians that appeals to cognitive development (in addition to self-ownership) would have to allow thirteen-year olds with precocious cognitive development the freedom to use narcotics, engage in prostitution, or sell themselves into slavery. Such a principled position finds little support from our intuitions, however. In the end, we cannot avoid the conclusion that

many of our intuitions concerning self-ownership—particularly those intuitions relevant for specifying what is permissible for individuals to do with their bodies—are highly dependent on conventions established by the law and other social norms, as well as intuitions and beliefs concerning other (cognitive) capacities, and without the aid of these conventions and norms in the state of nature, our intuitions become even more nebulous.

Our intuitions are no less conflicting when it comes to ownership over our talents, capacities, and labor. Nozick admits that it may be morally arbitrary whether I have a certain talent in the first place, but he does not think it morally arbitrary whether and how I choose to develop that particular talent.²⁰⁹ He is certainly correct to draw the distinction but wrong to infer from it any purely individualistic conclusions regarding their ownership. Even if the bulk of the development of particular talents, capacities, and labor power could be attributed to individual responsibility, the role played by others and society more generally in fostering their development may attenuate claims to full ownership rights, particularly the right to a full return on one's labor.²¹⁰

This point regarding the development of talent and labor power carries important implications for whether the capitalist economic liberties fall under the purview of rights protected by self-ownership. We may have certain intuitions regarding the use of our talents, capacities, and labor that ground freedom of occupational choice as a control right of ownership, but these same intuitions do not extend to incorporating an absolute freedom to negotiate the

²⁰⁹Nozick, *Anarchy, State, and Utopia*, p. 214.

²¹⁰Mill claims in the *Principles of Political Economy* that the labor of teachers is productive insofar as they create "utilities" in the labor power of their students, that is, improve their labor power. One might naturally wonder whether teachers ought to have some portion of the future earnings of their students who at the time of education are not yet recognized by law as self-owners. Furthermore, he also claims that the intuition behind a system of private property is that people have a claim to the fruit of their labor, but he qualifies this claim in cases where the products of labor depend on "natural differences of strength and capacity"—it is giving more to those who already have more. The qualification suggests that our intuitions are muddled by a number of different considerations. *Principles of Political Economy*. New York: D. Appleton and Company, 1902, p. 46 and 210, respectively.

terms of employment. That is, intuitions grounding the latter freedom are more analogous to intuitions regarding contractual slavery rather than intuitions underpinning occupational freedom. Choosing to become a doctor, a musician, or to not develop my talents at all is an altogether different choice than the decision to exercise my musical talent on the condition that I work for a specific individual for certain number of hours a week at a particular place for a particular employer. Furthermore, agreement on the intuition concerning occupational freedom is again an entirely separate issue from whether the use of talents and labor power generates similar claims to full ownership of productive or natural resources in the state of nature or to the full market return in society. These rights that are supposed to follow by the exercise of self-ownership cannot be defended by an appeal to the same intuition underwriting occupational freedom. One reason is that our intuitions become more convoluted in the latter two cases as opposed to those underpinning occupational freedom insofar as the interests of other members in society become more salient and relevant. Society's interest in having the best surgeons is often compatible with an enormous scope for occupational freedom. Another reason is that our intuitions may be influenced by beliefs about the genesis of one's talents and skills, which may attenuate claims to the return produced by those talents and skills (see footnote 50 above). Take for example Wilt's ability to collect the full market return on his basketball skills. Intuitions would be mixed from members in a capitalist society (is Wilt's skill the result of hard work or luck?), and certainly the intuition in favor of an affirmative response would be rejected from members living in an egalitarian society.²¹¹ Yet, despite these variances in intuitions regarding market returns to one's talents and skills, Wilt remains free to choose whether to play basketball

²¹¹For further reference on this point, see Cohen's comments in "Robert Nozick and Wilt Chamberlain: How Patterns Preserve Liberty," in *Self-Ownership, Freedom, and Equality*, 19-37, pp. 28-31.

and to exercise his occupational freedom.²¹² The intuitions appealed to are inescapably relative to the norms established and prevalent within a given society. Not only then does one intuition defending a particular economic freedom not extend to another economic freedom. But the fact is that whatever intuitions that we may have regarding self-ownership are often shaped by a host of implicit assumptions that include among them a broader moral framework, other normative values, and some picture of the sort of society we want to live in (or actually do live in).

As a result, it may turn out that in the state of nature, we will have to depend on the larger moral theory operating in the background to help draw the general contours of (self-)ownership rights. If it turns out according to the background moral theory that we have moral obligations to help others in need then those obligations would function to constrain the outlines of the ownership system. This explains why the Lockean conception of self-ownership and his system of property differ so much from the libertarian conception. Locke constrained his system of property based on his larger theological framework, and we see the effect of this both in his claim that individuals have a general claim right to material resources necessary for survival, which trumps claims of entitlement and property, and in the further instance of the Lockean proviso—an additional constraint on acquiring property. But this means that the system of property would be derivative of and not part of the foundation of moral theory itself as Nozick seems to treat it.

There may yet be other normative, non-political values available in the state of nature that libertarians could appeal to, but as I will suggest in the following subsection, even in these cases the results are largely indeterminate at best and directly antithetical to the libertarian

²¹²Of course, any tax structure will affect the attractiveness of different forms of work—more so in a society shaped by capitalistic and individualistic values as opposed to a society that emphasizes communitarian values. The point, nonetheless, is that our intuition behind freedom of occupation is not itself dependent on a particular rate of return for any specific occupation. These are two conceptually distinct incidents of ownership and require appeal to different intuitions.

position at worst. If we must depend either on mechanisms provided by the state apparatus or intuitions supported by political conventions or societal norms, neither of which are available to us in the state of nature, to specify the features of (self-)ownership, then we cannot argue that in the state of nature self-ownership entails either full ownership or something less. And if we cannot make this argument, then certainly we cannot appeal to self-ownership to determine the status of the capitalist economic liberties or the structure of the state itself.

There is another alternative. Throughout the chapter I have treated self-ownership as a *description* of what it means to exercise the capacity of forming and pursuing a life plan rather than following as some derivation from that capacity. On this understanding of the relation between the two concepts, libertarians might provide the following rejoinder to the argument that our intuitions in the state of nature fail to support the identification between self-ownership and full ownership. Libertarians might insist that self-ownership is axiomatic and the connection between it and full ownership is stipulated by definition.

Libertarians could make such a move only at the expense of trivializing whatever substantive normative conclusions they sought to derive by appealing to self-ownership. For if self-ownership is simply *defined* as thickly as it is by libertarians in terms of negative liberty with its accompanying control rights, which are then taken to have nearly absolute status as basic rights, then the minimal state follows merely analytically. The derivation itself is trivialized and the argument for the minimal state is secured by definitional fiat. Furthermore, absent any arguments for defining self-ownership in terms of full ownership at the pre-institutional level, then the concept certainly plays no justificatory role in defending the minimal state from a normative standpoint because it has, as Ryan puts it, “beg[ged] every serious question at issue.”

The dilemma here is particularly acute not only for libertarians but for every liberal position covered in the dissertation that attempts to derive the status of the capitalist economic liberties (and in turn, the form and nature of the state more generally) by appealing to some conception of the person. On the one hand, some of the liberal theories, such as Rawls's justice as fairness, appeal to a thinner notion of the person in order to avoid begging the question as do libertarians. However, the thinner that a conception of persons is then the easier it is to show that it leads to incompatible institutional regimes. At the opposite end, when the theory attempts to strengthen this weakness by making the conception thicker, it does so at the expense of begging important questions and undermining its normative conclusions. The prospects for constructivism in liberal political philosophy do not appear promising.

4.3.2 Other Values in the State of Nature

We might reasonably think that, in addition to moral theory, there are other, “free-floating” values accessible in the state of nature to which libertarians could appeal to in their arguments for self-ownership. The most obvious of these values would be freedom or liberty.²¹³ Libertarians might claim that the proposed identity between self-ownership and full ownership is the best interpretation or understanding of freedom, or that the identity between the two expresses the best way of valuing freedom. Any alternative understanding of self-ownership provides either a deficient conception of freedom or a deficient mode of valuation. These claims fail on both accounts.

Firstly, libertarian self-ownership paradoxically turns out to be extremely restrictive of individual freedom. In a recent paper, David Sobel argues that libertarian self-ownership makes too many actions impermissible.²¹⁴ This paradoxical implication follows from the two features

²¹³I use the terms interchangeably.

²¹⁴Sobel, David. “Backing Away from Self-Ownership,” *Ethics*. 123(2012): 32-60, pp. 35-37.

highlighted repeatedly throughout the chapter: the wide scope of negative ownership rights attributed to self-ownership along with their stringent status. As a result of these two features, there are many instances in which actions result in minor infringements of others' self-ownership rights that would have to be prohibited. Sobel provides several compelling examples to demonstrate this problem. A number of diverse activities essential to our lives, such as driving cars and flying planes distribute pollutants harmful both to the environment and human beings, or more fancifully, distribute pollutant that only cause an annoying itch violating individuals' property rights to their skin. Without their consent, all of these actions, and likely many more, would have to be prohibited. Any society that would have to prohibit actions that result in minor infringements of others' self-ownership rights would, as Nozick puts it, "ill fit a picture of a free society as one embodying a presumption in favor of liberty."²¹⁵

Sobel proceeds in the rest of his paper to canvass a number of responses provided by Nozick and left-libertarians to the overly restrictive nature of self-ownership and its paradoxical implications for freedom, and in doing so, rejects all of them for a variety of reasons.²¹⁶

Whatever his reasons for rejecting the responses, what is particularly important for my purpose here is that a common theme running through the responses is either a backing away from libertarian self-ownership altogether—as Sobel suggests Nozick does with his "cross and compensate" conception of rights—or attempts to make it more accommodating by further refining and modifying some of its features—typically by weakening the stringency of its rights.

To this effect left-libertarians introduce a number of exceptions to the self-ownership thesis

²¹⁵Nozick, *Anarchy, State, and Utopia*, p. 78.

²¹⁶Interestingly, none of the responses covered by Sobel attempts to make such actions permissible either by pointing to the tacit consent of individuals in society or by manufacturing their hypothetical consent. Certainly, it seems that many of us *would* consent to such violations of our self-ownership rights. One of the reasons that Nozick rejects the "cross and compensate" conception of rights, which allows rights violations provided there is compensation, is that there would be insurmountable transaction costs in attempting to secure the *actual* consent of individuals potentially affected by the action. See *Anarchy, State, and Utopia*, pp. 73-77.

designed to mitigate some of its more unpalatable implications.²¹⁷ The important point is that in either case there occurs some weakening of both the connection between self-ownership and full ownership and the status of self-ownership rights.

It was after all a commitment to freedom that led libertarians to equate self-ownership with full ownership. However, one consequence of explicating self-ownership in terms of full ownership is to prohibit a wider number of actions than originally expected insofar as many actions happen to violate the self-ownership rights of others in very minor ways. It seems then, that in enforcing individuals' property rights, the minimal state oddly turns out to be very restrictive when it comes to the scope of permissible actions open to individuals; libertarians are thus forced to respond by modifying self-ownership in different ways. From these comments we can conclude then that libertarian self-ownership does not, as it stands, provide the best interpretation of freedom.

Secondly, libertarian self-ownership fetishizes particularly odd instances of freedom in such a way that makes us wonder whether it truly reflects the most appropriate mode of valuing freedom. The best way to value freedom, according to libertarians, is to respect *any* decision a self-owner makes—the most notorious and contentious example being where an individual chooses to sell herself into slavery to avoid starvation. Libertarians thus think that the best way to value freedom is to respect one's freedom to abnegate all future uses of freedom and reject, as a consequence, all forms of paternalism. But if freedom is so important we may think, to the contrary, that the best way to value it is to deny that it is alienable, particularly when we understand that the only circumstances in which an individual is likely to alienate one's freedom is when the consequence of failing to do so entails the loss of one's life.

²¹⁷Sobel, p. 50.

It is not at all clear, however, why having the freedom to make this sort of choice—that is, the choice between starvation or slavery—is a valuable exercise of freedom. We may think that it is important, *if* confronted by this choice, to have the freedom to make this decision for ourselves rather than having some other entity, such as the state or chance, make the decision for us. But this consideration does not by itself tell us whether we ought to allow, in the first place, conditions to come about where individuals would face such a choice. That is, we may deny that respect for freedom *allows* or requires that individuals have the *opportunity* to make this sort of choice. The most important reason for thinking this is that if individuals were confronted by another choice set, one where the alternative option did not mean imminent death but implied even a far lower level of material well being (that just barely above imminent death), then I take it to be uncontroversial that individuals would not be willing to alienate their freedom under these circumstances. History has taught us that individuals are willing to sacrifice all other values, including life itself, to secure their freedom.²¹⁸ So, unless our aim is to maximize in a very crude manner the number of choices confronting a fixed set of individuals at one specific interval in time (and if this is indeed our aim, then why not begin with the Hobbesian state of nature where we are free to do whatever we please?), then it will be necessary to adopt a more nuanced mode of valuation.

Rather than simply maximizing the total set of choices open to individuals, our aim in valuing freedom should be to achieve the relatively weaker point of making it more difficult, by preventing individuals the ability to exercise their freedom in ways that would diminish the set of choices open to them in the future. On the face of it this sounds implausible or highly

²¹⁸Some might even deny their willingness to alienate their freedom in this case because of the shame and degradation they think that will likely follow. After the contract is completed and the individual no longer faces imminent death, is it really possible for any individual to go on accepting being a slave, when they have experienced freedom before? Would not such contracts require continual enforcement?

paternalistic as there exist a number of risky behaviors individuals could engage in that may diminish their future set of choices and freedoms, such as smoking or cliff diving, etc. But there is an important difference between the choice to smoke cigarettes or to participate in cliff diving that makes both choices distinct from the choice to enter into slavery. After all it is true that how we choose to diminish our future freedoms can be an important expression of freedom itself. Risky behavior, though it may have the consequence of diminishing an individual's future opportunities for freedom, is obviously different than the decision to sell oneself into slavery in order to avoid starvation. At the outer bounds of difference, these former choices are dependent on and relative to individuals' values and priorities, and this leads to varying levels of participation in these activities. But more centrally, these are choices that individuals would willingly (and reasonably) confront: not only are these valuable exercises of freedom in themselves, but they also represent circumstances that we reasonably think ought to be brought about so individuals can exercise those important freedoms. In contrast, there is no disagreement as to the disagreeableness of being confronted by the choice to starve or contract into slavery; no individual would willingly be confronted by such a choice.

We can sharpen this point somewhat in the following way. If we were to imagine possible worlds that differ only in the ways in which individuals might diminish the future set of choices open to them, I take it to be uncontroversial that, all else being equal, individuals would not choose to live in a world where voluntary slavery was a possibility, but they would choose, all else being equal, to live in a world where risky behavior, like that described above, is possible. The latter possibility represents one that individuals would desire to be confronted with, while the possibility of being confronted with circumstances that make voluntary slavery a desirable alternative does not. So, even though there is some value in exercising our freedom in

making that choice *if* the circumstances arose, as we are not concerned with maximizing freedom in such a crude manner, this consideration fails to provide us with a reason for allowing this choice set to come about for individuals to exercise that specific freedom at all.²¹⁹ We should seek, rather, to obviate the need for the exercise of this freedom.

To this end we could introduce two complimentary measures designed to make it more difficult for individuals to exercise their freedom in ways that would diminish their future set of choices by contracting into voluntary slavery: we can ensure individuals have an adequate amount of resources to avoid being confronted by such a choice in the first place, or we can directly obviate such choices altogether—on the part of both the seller of her body as well as the *buyer* (the potential slaver owner)—by prohibiting and not enforcing such contracts. If contractual slavery is prohibited, then instead of offering slavery as an alternative to starvation, both the seller and buyer would have to offer more reasonable terms, such as wage labor. In such circumstances it is not the case that some independent entity is making the choice between starvation and slavery for the individual. Rather, the state has prevented the individual from making this choice by nullifying the choice set altogether. On this argument individuals would remain free, except in this one way, to minimize their future set choices by exercising their freedom in myriad other ways.

We can conclude then that the best way to value freedom is not to respect a choice to abnegate freedom, particularly one that will occur only in exceptional circumstances, but to exclude, precisely because of its exceptional nature, that very possibility altogether. From this we

²¹⁹Because I take it for granted that no sane individual would dispute this last claim, the distinction made here is not unduly subjective. That is, there are many “hard” choice sets individuals would rather not face—life is full of them—yet, these are not analogous to the repulsiveness expressed toward the slavery example. Furthermore, there is a great degree of intrinsic value when individuals exercise their freedom in “hard” cases. That some individuals are unwilling to confront a particular choice set is not, in other words, sufficient to conclude that it not arise.

can conclude further that the best mode of valuing freedom implies something less than libertarian self-ownership—that is, something less than full ownership. And this conclusion is, I believe, more consistent with the intuition that freedom itself is not some good to be bartered on the market like any other good. Libertarians are of course free to reject the argument presented here as to what would be the best mode of valuing freedom. In doing so, the burden shifts to their shoulders and they must present their own argument as to why respecting *any* decision individuals make, such as the decision to contract into slavery to avoid starvation, and thus why full ownership, present the best mode of valuation.

4.4 Conclusion

In this chapter I have explained and evaluated the role of self-ownership within libertarian theory. I have spent considerable time in motivating the need to attack libertarianism on a higher theoretical level. At this higher theoretical level, I have argued that it is difficult to fill in self-ownership with enough substantive content to allow it to play any determinate role, let alone a congenial one, within libertarianism.

The conclusions derived in this chapter can be read as establishing the second horn of the liberal dilemma facing constructivism and liberal political philosophers. A thick conception of persons begs all of the important questions, and in doing so undermines whatever normative conclusions are derived from it.

Conclusion

Constructivist liberal political philosophers appeal to their idealized conceptions of persons in order to determine and justify either excluding or including the capitalist economic liberties within the list of basic rights afforded constitutional protection. I have argued in this dissertation that these philosophers who attempt to derive a scheme of basic rights, and consequently some of the features of society's institutions, from an idealized conception of persons face a dilemma. On the one hand, these idealized conceptions of persons are so thin—in order to avoid begging the question—that it becomes possible to show that they lead to contradictory conclusions. Some philosophers on the other hand provide thicker conceptions and in doing so end up begging the question concerning the status of the capitalist economic liberties.

What does this dilemma mean for the future of this particular brand of constructivism or perhaps constructivism in general? In this concluding section I want to explore some of the upshots of the central thesis presented in this dissertation.

On the Difference between Personhood and Human Nature

The natural rights tradition in general tends to derive natural rights by appealing to features of human nature. Reason, God, or some other mechanism makes clear (or is supposed to) what natural rights we have in virtue of possessing some specific property—much like we saw in section 1 of chapter 1. We should not, however, identify human nature with liberal conceptions of persons.

As a conceptual tool, human nature is less flexible as it is primarily descriptive in character in contrast to the idealized conceptions of persons. Human nature may be more or less malleable to the point that thinkers can generate idealizations grounded in it, which are conceptually possible in the distant future. More than that, however, is the explicit or implicit

adoption of particular values that become dominant in the characterization and formulation of a conception of personhood within political philosophy. We saw in the first chapter a framework of autonomy which included two related but conceptually distinct components: the cognitive and the physical, each of which includes a number of dimensions. Within the cognitive component, we saw a range of ways in which persons might exercise their capacity in forming a life plan that extended from engaging in a process of critical reflection to ignoring critical reflection altogether. The physical component harbored disagreements over the nature of freedom. It was the point of this framework to show that liberal political philosophers emphasize different dimensions of this framework in their conceptions of persons. Whereas the process of critical reflection is essential for Rawlsian persons to exercise their moral power to form a rational life plan, Nozick mentions only once that in doing so individuals should not be “the plaything of immediate stimuli.” As idealizations, the conceptions of persons harbor implicit and explicit value judgments.

We may distinguish the above with the naturalism of Adam Smith and David Hume. Smith and Hume do not attempt to derive normative conclusions from human nature—to do so would violate the distinction between is and ought—but they do seem to think that it constrains whatever political institutions that will come about in a natural (without interference) process. That is, the arrangement of institutions—with their specific rules and regulations—will come about in such a way where the end product corresponds to the empirical facts that describe human nature. In this way, human nature functions to constrict the range of feasible political institutions without leading to any particular arrangement in itself.

On the Determination and Justification of the Institutional Apparatus

The role that these conceptions of persons play in liberal theory extends beyond the determination of a particular institutional apparatus; each is also meant to justify the particular arrangement of institutions that follows from the axiomatic conception of persons. Without this second, justificatory function it's not clear why the derivation would be of any importance from a normative standpoint beyond a heuristic exercise in society building. The derivation is important precisely because of the justificatory aspect. If we find ourselves agreeing to some conception of persons, then we are committed, according to the procedure, to whatever form that the institutions in society take as a consequence.

On this understanding of the procedure, the decision between conceptions of persons becomes an incredibly important one. Some philosophers take the normative appeal to be implicit within the conception, so that the conception evokes a sort of intuitive or tacit agreement. What is conspicuous in these cases is the absence of any explicit argumentation in favor of the particular conception of persons. Other philosophers might be more explicit in highlighting the normative appeal of their conception by explaining how it embodies or manifests important values shared by members within a liberal society. But the argument of my dissertation, if sound, undermines the relevance of the entire constructivist model insofar as it obfuscates the connection between a particular conception and a particular institutional arrangement.

Now, it's likely that there is no linear relationship between a conception of persons and the broad features of society. Instead, we may consider the relation in the following way. Imagine that each particular arrangement of institutions is a possible world represented by a set of propositions. Each conception of persons is connected to a *set* of these possible worlds as

opposed to some strictly linear relation, and these sets of possible worlds bear in kind more than family resemblances. Each possible world (institutional arrangement) shares most of its propositions with the other possible worlds (institutional arrangements) in the same set, and in this way they form a set in which each member is connected to the same conception of persons. Within these lists of propositions, some are peripheral in importance so that contradicting or contrary propositions between possible worlds does not signify a major issue. However, some propositions are more central, in which non-contradiction is essential if they are to be included within the same set that is connected, in turn, to the same conception of persons. Some examples of these more central propositions concern the status of the capitalist economic liberties and the structure of property system, and likely some of the other basic liberties included or excluded.

Now as we move from one conception of persons to another within divergent traditions of liberalism—as we move from say, high liberal to market democratic and onto libertarian versions—then we would expect to find more contradictions within the more central propositions that comprise each set of possible worlds. In comparing the furthest two conceptually divergent sets we would expect to find a greater number of contradictions between the central propositions of each set. That is, we would expect to find more contradictions between the propositions describing the institutional regimes connected to Rawlsian persons when compared to the set of institutional regimes derived from self-ownership (the comparison of which to non-liberal forms of society would yield even more contradictions for the propositions between the different sets of possible worlds).

The above constructivist model works only on the viability of maintaining the distinct boundaries that differentiate each set of possible worlds, and these boundaries depend on the fact that members within each respective set share the feature of non-contradiction among their

central propositions. The argument of my dissertation obfuscates this model to an incomprehensible degree that undermines constructivist argumentation of all its potency. According to my argument, we end up with a model in which the very same conception of persons leads to a set of possible worlds (institutional arrangements) in which the central propositions are contradictory or incompatible! Not only that, but it's no longer clear that a particular conception of persons leads to a tractable set of possible worlds in the first place. Instead of a model where we have an input that leads to a distinct set of non-contradictory outputs, we end up with a mixed-and-matched model where supposedly incompatible inputs lead to the same outputs and where one input leads to contradictory outputs and outputs that are incompatible with each other.

If this is an accurate description of the model that follows from this particular constructivist procedure in light of the arguments presented throughout this dissertation, then the conceptions of persons cannot play any determinative or justificatory role insofar as the same conception justifies the gamut of liberal institutional regimes, including those that harbor deep-seated and fundamental contradictions. If I can appeal to Rawlsian persons or self-authors to defend social democratic regimes, then these conceptual tools are not performing any sort of conceptual work, let alone work of a justificatory capacity. The choice between conceptions of persons becomes meaningless.

On the Application of First Principles and Conceptions of Persons

The idealized conceptions of persons employed by the various constructivist political philosophers covered throughout the preceding chapters for the most part perform a similar function to those first principles found within systematic moral theories like utilitarianism or Kantianism. Whereas the principles in moral theory are meant to guide individual action, the

conceptions of persons are meant to determine the formation and structure of society at an institutional level. In both cases particular normative conclusions—in the form of auxiliary principles, institutional rules and regulations, and practical dictums of individual behavior—are supposed to follow from those first principles and conceptions of persons.

The superficial application of first principles to non-ideal circumstances can produce destructive results.²²⁰ The nature of first principles makes them unsuitable to be applied so crudely to the various complexities and ambiguities that arise in real-world circumstances. These conceptions of persons covered throughout the dissertation are not immune to these pitfalls. Barbara Fried, for example, criticizes left-libertarians and right-libertarians over the indeterminacy inherent within self-ownership when it comes to deriving concrete policy implications. While maximal self-ownership protects my right “to use my fist as I please” according to Gerald Cohen, that right ends at the “tip of your nose” where your self-ownership rights begin. But Fried raises a host of practical ambiguities concerning Cohen’s formulation of maximal self-ownership. What if my fist grazes your nose by accident on a crowded street? What if I use my fist on your nose in self-defense? Whatever intuitive answers readers may have to these questions, they are not provided, so Fried claims, by appeals to self-ownership.

Fried may be correct in asserting this point, but I am not sure what sort of indictment of self-ownership, and of formalized conceptions of persons, her point substantiates. A degree of indeterminacy is inevitable when it comes to the application of these sorts of conceptions to the messy scenarios that confront us in the real world. I do not think that we can expect determinate answers in every case simply by appeal to these conceptions alone. It seems to me, however, that they are meant, nonetheless, to play an indispensable role in these sorts of all-too-common circumstances. These conceptions establish a broader, regulatory framework that aid in their

²²⁰Phillips, Michael. “Reflections on the Transition from Ideal to Non-Ideal Theory,” *Nous*. 19.4 (1985): 551-570.

application to concrete cases. From the thesis of self-ownership a set of related sub-principles and general policies that share a commitment to the set of values embodied within self-ownership would follow. It is these sub-principles, policies, and values that allow us, at the very least, to exclude certain factors and considerations from our deliberations and further guide our application of self-ownership in concrete cases. These conceptions are supposed to determine the broad and principal policies, rules, and regulations of society and its institutions, which are then applied and interpreted in light of the initial conception and its concomitant values, to the smaller but more persistent issues that arise within these institutions and that occur as a result of individual interaction in non-ideal circumstances. Whereas Fried argues that there is a degree of indeterminacy in the application of these conceptions at lower, more local levels of human interaction, the argument presented in my dissertation undermines the fundamental role that these idealized conceptions of persons are supposed to play at the broader, more global level of institutional design. I have argued that the conceptions of persons are woefully inadequate when it comes to determining the broader features of society, such as the purview of legitimate state interference in market activity and the rules meant to govern the market, not because these conceptions fail to give us *any* answers at all²²¹; rather, they fail because each conception gives us *too many* answers—many of which are in direct conflict with one another.

One might object here that the arguments, particularly in chapter 2 and chapter 3, prove too strong a conclusion for my purposes. That is, these conclusions, if correct, do not lead us to cast skepticism over the viability of constructivism; instead, they show more straightforwardly that the Rawlsian and Tomsaian positions are wrong. After all, if Rawls argues for *x*, Tomasi argues for *not-x*, and I argue for *not-x* in Rawls' case and for *x* in Tomasi's case, then, according

²²¹This may be a more accurate description of delineating the connection between self-ownership and full ownership in the state of nature.

to the law of the excluded middle, in each of the two cases one of those positions be true.²²²

According to the objection then, my arguments show only that Rawls and Tomasi were mistaken, not that we should reject constructivism altogether.

I have three responses as to why this is a mistaken interpretation of the dissertation's conclusion. First, let us suppose that the situation is as the objection describes it: Rawls argues for *x* while I argued in chapter 2 for *not-x* and one of these claims must be true, and therefore, it does not turn out that constructivism permits of too many answers. It would follow as an implication of my argument that our original application of these conceptions was completely incorrect across the board. This is a troubling implication. Typically, disagreements concerning the application of first principles in moral theory and these conceptions in political theory deal with the details of marginal cases (consider Fried's objection against self-ownership above), and do not entail wholesale contradictions or incompatibilities of the sort that we are seeing here. To say that the correct application of these conceptions leads us to entirely incompatible results in terms of institutional regimes than what we initially thought should cause us some degree of alarm as to what sorts of conclusions these conceptions actually allow us to draw from them, precisely because, I claim, they are so thin.

Second, it is a mistake to treat the objection's description of the resulting state of affairs—as if our choice were simply between two claims (each of which describes one of two contradictory institutional regimes)—as exhaustive of the possibilities so that logic commits us to one of those two claims. It is a mistake, in other words, to assume that we are dealing with a binary choice between two sets of economic liberties and two institutional regimes. Chapter 2 argued that the development and exercise of the Rawlsian moral power to form and pursue a life

²²²I have to admit that it's not clear to me what it means to say that these sorts of arguments can be "true." What are the truth conditions for arguments of this nature? My guess is that when we speak of these arguments as being "true" or "right" we mean that they are more persuasive and convincing.

plan required protecting the capitalist entrepreneurial freedoms for the exercise of deliberative rationality for some individuals. But certainly this claim is compatible with similar arguments that connect socialist economic liberties or even a communist regime to the freedoms necessary for the exercise of deliberative rationality.²²³ The arguments presented in chapter 2 and 3 are not exhaustive, and they certainly do not preclude the possibility of offering similar arguments for divergent sets of economic liberties and institutional regimes. That it is possible to show that the same conception of persons leads to a contradictory institutional regime is sufficient by itself to cast doubt upon the method's viability; that the argument presented here is not exhaustive but permits of more examples that show that the same conception leads to or is compatible with different sets of economic liberties and institutional regimes is hardly an objection at all. I welcome more of these arguments as they further substantiate my thesis. In Rawls' case I focus on the capitalist economic liberties and a capitalist regime because they provide the most striking examples of incompatibility, but they need not be, and likely are not, the only examples.²²⁴

Third, I understand the conclusions defended in these chapters to present a picture roughly analogous to that depicted by Kant's antinomies. Kant observed that the problem with concepts such as a free causality, space and time, infinite divisibility, and God was that reason provided us with plausible arguments on opposite sides of the question in the case of each concept. Reason provides us with a plausible argument both for why there cannot be an uncaused

²²³A journal referee actually raised this point as an *objection* against my argument. The referee claimed that my argument (in chapter 2) *fails* to show that socialist and communist regimes are not also capable of protecting similar freedoms that are necessary for the exercise of deliberative rationality. But far from being an objection, this point only further substantiates the overall thesis offered in the dissertation: these conceptions of persons are compatible with a diverse number of incompatible institutional regimes and tell us very little, as a result, about which institutional regime follows or which we should select in light of that conception.

²²⁴In fact, in the opening pages of chapter 2 I suggested that similar arguments could be offered for connecting Rawlsian persons with a set of socialist economic liberties, and in the concluding portion of section 2 of chapter 3, I suggested that self-authorship could be read as compatible with a Hegelian system of property ownership or a system that protected socialist economic liberties as basic rights, or as I argued, simply leaving the capitalist economic liberties off the list of basic rights.

cause *and* why there can be an uncaused cause. Some of Kant's contemporary critics took these antinomies as examples of deficiencies inherent within the exercise of reason and felt the need to abandon its use in the context of these concepts altogether. Kant felt that this response went too far, and his division between the noumenal and phenomenal worlds was a response to the problems posed by the antinomies: one side of the antinomy was true in the noumenal world while the other side was true in the phenomenal world.

Constructivism in political philosophy mirrors the situation with Kant's antinomies. These chapters provided plausible arguments (and even more are available) that demonstrate the opposite positions from what Rawls and Tomasi have each argued. One might respond to this situation, as did some of Kant's critics, by arguing that it provides us with a strong reason for abandoning the use of reason in attempting to construct political theories and theories of justice altogether, and in light of this conclusion, that we ought to adopt the anti-rationalism of Adam Smith and David Hume. Like Kant, I too believe that this suggestion moves too far. Unlike Kant, however, I have no positive argument here (or convenient metaphysical distinction) capable of salvaging reason in political theory more generally, nor one that provides us with a suitable alternative as to how we ought to replace the form of constructivism that I have attacked throughout these chapters (I do offer some brief remarks in the final section below). Nonetheless, what these conclusions show is that there is something deeply problematic and deeply uninformative engrained within this particular form of constructivism. But it does not follow that we ought to abandon the use of reason in political theory and to adopt the evolutionary approach championed by anti-rationalists.

On the Future of Constructivist (broadly speaking) Political Philosophy

Insofar as these idealized conceptions of persons harbor implicit value judgments as I mentioned previously, there is a degree to which they all beg the question against opponents. The severity of this problem depends, as we saw in the case of libertarianism, on the extent to which political philosophers thicken their conceptions: a thicker conception incorporates more normative values and rights within its very explication, and in doing so, undermines the force of the normative conclusions meant to follow. Avoiding this problem led, so I have argued, to the other horn of the dilemma. In light of this dilemma, the arguments presented throughout the dissertation, and the claim that all of these idealized conceptions of persons implicitly harbor normative values to some degree, then we ought to discard any reference to these conceptions of persons and engage, instead, more directly with the normative values themselves. Perhaps once we have reached a better consensus in how best to understand these values, then we can proceed in determining how best to structure society in order to promote them. But it does not seem to me that we make any progress in either of these areas by employing a conceptual tool such as an idealized conception of persons—the effect of which is to mask, obfuscate, and cast one step further back areas which deserve our attention, such as debates that focus on the best way to understand freedom. Many participants in debates between high liberals, market democrats, classical liberals, and libertarians end up speaking past one another for precisely this reason. High liberals criticize libertarians—both left and right—because self-ownership fails to promote autonomy, positive freedom, or some other normative value they cherish, whereas libertarians respond in kind by criticizing high-liberal positions because they think that negative liberty is marginalized in favor of positive liberty. At bottom of the debate here is our understanding of the nature of freedom, not over conceptions of persons.

To make progress in these debates I have argued that we must abandon appeal to these conceptions. The next step is both meta-normative and meta-political. That is, in our debates concerning the nature of freedom, distributive justice, and other central features that compose a theory of justice, we must first decide what the relevant considerations and criteria are that would support evaluations and arguments in favor of particular interpretations of these normative values. Once we have this broader framework in place (and it may not be the same in the case of each normative value), then we can proceed in our debates as to whether a negative conception of freedom or a positive conception of freedom serves as the better interpretation. And only once we have completed this task can we proceed to incorporating these values within our theories of justice, including our theories of distributive justice and our conclusions concerning the sorts of property systems that society ought to implement, to construct a theoretical model of the ideal society. Until then, many of our arguments in political philosophy will continue to speak past each other.

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